OBSERVATIONS

ON THE

Statutes for Regiſtering Deeds:

WITH A

COLLECTION OF CASES

UPON THE

OPERATION AND INTENT OF THOSE STATUTES.

TO WHICH ARE ADDED,

Inſtructions for carrying them into Effect;

AND A GREAT VARIETY OF

MEMORIAL PRECEDENTS,

SUITED TO THE REGISTRIES OF MIDDLESEX AND YORK.

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Apparent

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CHAP. I.

General Ideas on the Acts of Parliament for regiſtering Deeds, &c.; with Notes of Caſes analogous to their Operation.

THE enlightened Sir William Blackſtone, in his Commentaries on the Laws of England, ſlightly glancing at the acts of parliament for regiſtering deeds, and other incumbrances of landed property in the counties of Middleſex and York, obſerves that, "however plauſible the proviſions "of theſe acts may appear in theory, it hath been "doubted by very competent judges whether more "diſputes have not ariſen in thoſe counties, by the "inattentions and omiſſions of parties, than pre-"vented by the uſe of regiſters."

If the learned commentator had adduced any facts, from his own obſervation, in ſupport of theſe doubts, ſo as to depreciate the ſtatutes in queſtion, I ſhould be deterred from thus ſtepping forward; but poſſeſſing, from my official ſituation, a complete opportunity to eſtimate the *practical* benefits of the Middleſex regiſtering act, from which thoſe of the three ridings of York differ in

no eſſential points, I truſt I ſhall not be accuſed, by the diſpaſſionate reader, of an unbecoming temerity, when I ſuggeſt that the foregoing ſtricture, if it can with propriety be ſo termed, ought not to weigh concluſively on the public mind, unſupported by any poſition from the authority whence it proceeds.

" The inattentions and omiſſions of parties," confeſſed to be the cauſe of diſputes, no exertions of a legiſlature can ſucceſsfully combat; nor ſhould any complaint be made reſpecting the laws for regiſtry, if theſe only were the ſources of danger.

To ſay that the advantages derived from thoſe laws are commenſurate with the benefits propoſed in their preambles, might be thought too bold an aſſertion; but any deficiency is, in my opinion, more to be attributed to the contrary deciſions obtained upon their conſtruction, and which it is my chief motive in this addreſs to point out, than to the legiſlature which framed them.

It is an incontrovertible truth that in the county of Middleſex manifold frauds and difficulties of title are, by the operation of the ſtatute relating to it, almoſt daily avoided: and although it may be poſſible that the evils ariſing out of the neceſſity to regiſter deeds have been numerous, I muſt be allowed correct, when I aſſert that very few caſes are diſcoverable in the report books to warrant ſuch an opinion.

In conſidering the effects produced by the written laws, one remark will be familiar to every diſcriminating

minating man, namely, that their advantages generally paſs within the obſervation of thoſe alone who derive a ſubſtantial benefit from them; but if any circumſtance ariſes productive of diſpute, it is (as it undoubtedly ſhould be) immediately publiſhed: and then prejudice often obtains, without an attempt to diſtinguiſh whether the ſtatute, or its expoſitor, moſt deſerves reprobation.

The events of queſtions argued ſince the paſſing of the regiſter acts upon the doctrine of *notice*, as applying to purchaſers and mortagees, inſtead of producing a greater confidence in the minds of individuals, reſpecting their ſafety in purchaſing lands, or lending money on land ſecurity, have excited more doubts of the efficacy of thoſe acts than any other cauſe; for that abſolute and poſitive neceſſity for regiſtering deeds and conveyances, which, by their language, is clearly and ſuccinctly expreſſed, ſeems, by ſome of the determinations of great legal authorities, to be rendered almoſt nugatory.

My immediate view for entering upon this addreſs is, as I have before hinted, to yield a fair and impartial repreſentation of the arguments ſuggeſted, and deciſions obtained upon ſeveral points relative to regiſtry; but more particularly on that of *notice*: thereby affording thoſe of my readers who have not already inveſtigated the caſes upon which ſuch arguments and deciſions are founded, the power to calculate upon their efficacy or danger with very little trouble.

In bringing theſe before the public, I have ſometimes taken the liberty to comment on their propriety: but I beg to premiſe that, whenever I have ſo done, it has been the conſequence only of finding no obſervation ſupplied by other perſons.

If, in my attempts, I have ſucceeded either to elucidate the law, or correct erroneous opinions upon it, I ſhall be ſenſibly gratified: that the beſt opportunity, notwithſtanding, may be given for the exerciſe of every perſon's judgment to approve or repel the arguments advanced, I have inſerted, *verbatim*, all the caſes from the law books in notes, as much in order of time as poſſible.

The firſt wherein the queſtion of *notice* preſents itſelf, and which is not fully related in any of the caſes hereafter cited, is *Chival* v. *Nichols*, Strange 664. (*a*) determined in Michaelmas term 12 Geo. I.

Here

(*a*) *Chival* v. *Nichols*.

Annuity granted out of lands lying in Middleſex. A. hath notice of this grant, and then purchaſes the inheritance of the lands. The grantee ſhall have his annuity againſt A. though his grant was not regiſtered.

One John Hall was poſſeſſed of a term of years in certain lands, lying in the county of Middleſex, and granted an annuity of 40l. to the plaintiff, to be iſſuing out of the lands. The defendant being concerned for this Hall in the management of ſome of his affairs, knew that Hall had granted this annuity to the plaintiff, and had ſeen the deed, and paid him part of the annuity on Hall's account. Afterwards Hall purchaſes the reverſion of theſe lands, and then the defendant purchaſes the reverſion and the term of Hall. Hall dies, and the defendant refuſed

Here a fraudulent intention on the part of the defendant is clearly defined; and, although this deciſion appears contradictory to the law on the ſubject of regiſtry, yet its only bad effect was an introduction of future diſcuſſions on the *equity of notice*, prejudicial to the due underſtanding of the purpoſes intended to be promoted by the ſtatutes.

The caſes of *Bedford* v. *Backhouſe*, and *Wright-ſon* v. *Hudſon*, come next in ſucceſſion: the firſt deter-

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refuſed to pay the plaintiff his annuity, becauſe the deed by which Hall had granted it was not regiſtered, according to the ſtatute 7 Ann. c. 20.; which requires that all deeds or conveyances of, and all incumbrances upon lands lying in the county of Middleſex ſhall be regiſtered within ſuch a time at the office; otherwiſe every ſuch conveyance ſhall be void againſt any ſubſequent purchaſer for a valuable conſideration. The defendant, therefore, inſiſted that he was a ſubſequent purchaſer for a valuable conſideration; and that the plaintiff's claim of an annuity could not affect him, becauſe it was not regiſtered.

The whole court were clearly of opinion, that the plaintiff was entitled to have his annuity out of theſe lands againſt the defendant, notwithſtanding this ſtatute. For the ſtatute only intended to give ſuch notice of former incumbrances to purchaſers, that they might not thereby be defrauded. But if a man knows, of his own knowledge, that there is a prior incumbrance, and, notwithſtanding that knowledge, will be a purchaſer, the ſtatute was never intended to relieve ſuch, though the firſt incumbrance was not regiſtered: for where a man purchaſes with notice of a firſt incumbrance, he purchaſes with an ill conſcience; and in a court of equity his purchaſe ſhall never be eſtabliſhed.—Therefore they decreed the plaintiff his annuity and the arrears.

determined by Lord Chancellor King, on the 26th *Nov.* 1730, and the latter on the 16th *Feb.* 1737, by Sir Joſeph Jekyll at the Rolls; Eq. Ca. Abr. vol. 2. p. 615. and ibid. p. 609. both avowedly printed from MS. Reports (*b*).

Such

(*b*) *Bedford* v. *Backhouſe* vel *Bacchus*, MS. Report.

A. lent money on a mortgage of lands in Middleſex, and the mortgage was duly regiſtered. Afterwards B. lent money on the ſame ſecurity, and his mortgage was regiſtered. Then A. advanced a further ſum upon the ſame lands, without notice of the ſecond mortgage. And it was held by Lord Chancellor King, *that the regiſtry of the ſecond mortgage was not conſtructive notice* to the firſt mortgagee, before the advancement of the latter ſum; for though the ſtatute avoids deeds not regiſtered, as againſt purchaſers, yet it gives no greater efficacy to deeds that are regiſtered than they had before; and the conſtant rule of equity is, that if a firſt mortgagee lends a further ſum of money, without notice of the ſecond mortgage, his whole money ſhall be paid in the firſt place.

Wrightſon v. *Hudſon.*

Wrightſon advanced 800l. on a mortgage in Yorkſhire, and regiſtered his mortgage, and afterwards *Hudſon* lent a ſum of money and took a judgment for it, which was regiſtered; and then Wrightſon advanced 270l. more, but without any *expreſs* notice of Hudſon's judgment; though it was argued on a bill brought by Wrightſon to foreclose, that Hudſon ought to redeem upon paying the *firſt* mortgage: for that, where ſuch regiſters prevail, every incumbrance ſhould be ſatisfied according to the priority of its regiſtry; and that the regiſtering Hudſon's judgment, was conſtructive notice to Wrightſon ſufficient to deprive him of the common benefit of a court of equity, whereby a firſt mortgagee, without notice, is to hold till all ſubſequent incumbrances are diſcharged.

Yet

Such deciſions aim at the very exiſtence of the regiſter acts, in denying the regiſtry to be conſtructive notice to purchaſers and mortgagees of antecedent incumbrances; the contrary intent having been the very ſoul and eſſence of their inſtitution, and deprived of which their effect would be, according to the emphatic expreſſion of Lord Hardwicke upon a future occaſion, only that of mere waſte paper.

The reſult of theſe caſes may be candidly conſidered as the opinion of one perſon; for Sir Joſeph Jekyll, as Maſter of the Rolls, could not well deny the doctrine of the higher authority, which had ſo recently decided before him. They apply exactly to ſo much of the general law of mortgages as bears affinity to notice, and the tacking of firſt incumbrances, abſtracted from any conſideration of the ſtatutes for regiſtry, upon which the arguments of counſel in the latter caſe ſeem very pertinent.

Previouſly

Yet it was reſolved, that theſe ſtatutes avoid only prior charges not regiſtered, but did not give ſubſequent conveyances any further force againſt prior ones regiſtered than they had before. That to have affected Mr. Wrightſon, Hudſon ought to have given him notice when he advanced his money, and that *though Wrightſon might have ſearched the regiſter he was not bound to do it*, and therefore it was decreed that Hudſon and the mortgagor ſhould be foreclоſed, unleſs they paid off both plaintiff's ſecurities.

Previouſly to the operation of thoſe ſtatutes, it was the uniform rule (founded upon principles, no doubt, of law and equity) that the holder of a firſt mortgage might defeat the ſecurity of meſne incumbrances by the acceptance of a further charge, provided he had not notice of the intermediate ſecurities, as in the caſes laſt cited.—So likewiſe, where more than one mortgage upon an eſtate exiſted, and the laſt mortgagee, or even a judgment creditor, not having had notice at the time of lending his money to the mortgagor, of any but the firſt mortgage, advanced to the firſt mortgagee his principal intereſt and coſts (if any had been incurred), ſuch laſt mortgagee or judgment creditor was entitled to ſtand in the preciſe ſituation of the firſt mortgagee, with reſpect to the ſum due on his ſecurity, and was alſo entitled, as the conſequence of defraying him, to be preferred to the meſne incumbrancers, in reſpect of his own mortgage or judgment, and to poſtpone all other claims to his own; upon the principle that, in ſuch caſes, the legal and equitable eſtates concentered in the ſame perſon.

This repreſentation of the doctrine of notice, as obtaining upon the general law of mortgages, cannot fail to be already ſufficiently comprehended by moſt of my profeſſional readers; but, as there will, probably, be ſome to whoſe uſe it may contribute, and, moreover, as it will yield a more complete

complete opportunity to aſcertain in how great a degree, and to what effect it was the intention of the legiſlature to benefit the ſubject in the promulgation of regiſtry, I have ventured the ſtatement.

Courts of equity had gone very far indeed to eſpouſe the principle of purchaſing firſt incumbrances, in excluſion of intervening ones (*c*); and their

(*c*) *Edmunds* v. *Povey* et al. Vern. Rep. Vol. 1. p. 187. edit. 1683.

The principal queſtion in this caſe was touching the buying in of incumbrances, viz. where there are firſt, ſecond, and third mortgagees, who had all lent their money without notice. The third mortgagee, hearing of the two former ſecurities, buys in the firſt incumbrance, to wit, a judgment *that was ſatisfied*; and it was ſtrongly inſiſted at the bar, that though this trade of buying in incumbrances had been formerly countenanced there, yet that it was, in truth, a thing againſt conſcience, and contrary to many eſtabliſhed rules of law and equity. But, after long debate, the lord keeper told them he wondered the counſel laid their ſhoulders to a point that had been ſo long ſince ſettled, and received as the conſtant courſe of chancery. It is true there have been ſtrong arguments uſed againſt the unreaſonableneſs of this practice; and there might be, likewiſe, ſtrong reaſons brought for the maintaining of it, and ſo was, at firſt, a caſe very diſputable; but being once ſolemnly ſettled, as it was in the caſe of *Marſh* v. *Lee* (1 Ch. 162.), he would not now ſuffer the point to be ſtirred. The counſel, in their own juſtification, replied, that his lordſhip, when this cauſe came firſt before him, had referred it to Sir Adam Ottley to ſtate the caſe ſpecially, and it now came before him on the Maſter's report, and there was no other point in the caſe but this; and, therefore, they ſuppoſed his lordſhip

their determinations, added to the confuſion ariſing from precedency amongſt incumbrancers, upon the doctrine of implied or conſtructive notice, furniſhed the idea of giving, upon record, ſuch information to the fair and honeſt purchaſer or mortgagee as ſhould effectually prevent his being led into error.

The like uncertainty and confuſion had been attempted to be obviated, in ſome degree, by the ſtatute of the 4th and 5th *William & Mary*, c. 16. *againſt clandeſtine mortgages*; the operation of which, on the diſtreſſed and unwary, was, I apprehend, defeated by the paſſing of the regiſter acts, ſo far as the latter locally attach: for no ſecret or fraudulent conveyance *can* occur in the regiſter counties, if the intent of thoſe acts is carried into effect.

Now it would ſeem by the aſſertion of Sir Joſeph Jekyll, *that a perſon is not bound to ſearch the*

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lordſhip intended they ſhould be at liberty to ſpeak to that matter.—But his lordſhip declared he would not change the rule that had ſo long prevailed in this caſe; but it may be he might do ſo when he found a man deſigning a fraud, and thought to make a trade of cozening by the rules of the court.

Serjeant Pemberton moved that, as to the point of notice, he ſuppoſed his lordſhip meant that a man that buys in a prior incumbrance muſt do it without notice of the middle incumbrance, not only when he lent his money, but alſo at the time when he bought in the prior incumbrance; *ſed non allocatur*.

the regiſter, as if the courts of equity, emulous to perſevere in old opinions, had intentionally endeavoured to confound the interpretation of the ſtatutes under conſideration; which, in ſupplying a radical means to defeat impoſition, certainly deſerve to be reſpected and upheld.

The ſyſtem of the general law of mortgages, ſo far as it related to notice, ſeems to me to have become partially altered by the eſtabliſhment of regiſters; upon the principle that the exerciſe of a caution, pointed out by the legiſlature, would protect all parties from injuſtice; and further, that the reaſonable and legal conſtruction of the ſtatutes demands that every individual, before he advances money to the proprietor of the equity of redemption, is bound, or the omiſſion is at his peril, to ſearch the regiſter for incumbrances up to the date of his ſecurity.

Such neceſſity, it is evident, would prevent the fraudulent mortgagor from eſtabliſhing an ulterior charge, for the mere purpoſe of defeating intermediate or ſecondary incumbrances; a practice which has had very frequent operation in counties where the regiſtry does not extend, to the material detriment of honeſt and *bonâ fide* incumbrancers.

I readily concur in the reaſonableneſs of giving notice to a firſt mortgagee on the creation of a ſecond incumbrance, though I think the regiſter acts meant to avoid ſuch a meaſure as an abſolute

rule

rule of proceeding: and it ought to be remembered that, from uncertainty of a mortgagee's reſidence, or ſome other unavoidable cauſe, the giving ſuch notice is not always practicable; whilſt, on the other hand, inquiry from the regiſtry is poſitively certain.

My readers will not fail to be ſurpriſed when I inform them that little better than four years had elapſed after the determination of Sir Joſeph Jekyll, when Lord Hardwicke, in the caſe of *Hine* v. *Dodd*, 2 Atk. 204. (*d*) aſſerted, "*that the* "*Regiſter*

(*d*) *Hine* v. *Dodd*, March 13, 1741.

The plaintiff, a judgment creditor upon an eſtate in Middleſex, prays to be let in upon it, preferably to the defendant, a mortgagee of the ſame eſtate, upon a ſuggeſtion he had notice of the judgment before the mortgage was executed: the judgment was entered on the 12th March 1733, but not regiſtered till the 12th June 1735. The mortgage was made the 24th May 1735, and regiſtered June 2d, 1735. There being only a defendant's confeſſion of notice proved, in direct contradiction to his anſwer, and contrary to a poſitive act of parliament made to prevent perjury. Lord Hardwicke decreed ſo far as the bill ſeeks to poſtpone the defendant's mortgage, it ſhould be diſmiſſed with coſts.

The bill was brought by a judgment creditor to be let in upon an eſtate of one *Proof* and his wife in Middleſex, preferably to the defendant, who was a mortgagee of the ſame eſtate, upon a ſuggeſtion that the defendant had notice of the judgment before the mortgage was executed; and likewiſe to inquire into the conſideration of the mortgage.

The judgment was entered upon the 12th March 1733; but not regiſtered till the 12th June 1735.

The mortgage was made the 24th May 1735, and regiſtered June 2d, 1735.

Lord CHANCELLOR.—This caſe depends upon the notice the defendant had of the judgment before his mortgage was regiſtered.

The

" Regiſter Act, the ſeventh of Ann. c. 20. was " notice to the parties, and a notice to every body; " and

The regiſter act, the 7th of Ann. c. 20. is notice to the parties, and a notice to every body; and the meaning of this ſtatute was to prevent parol proofs of notice, or not notice.

The regiſter act is notice to every body, and the meaning of it was to prevent parol proofs of notice.

But, notwithſtanding, there are caſes where this court have broke in upon this, though one incumbrance was regiſtered before another; but it was in caſes of fraud. The firſt was an Iriſh cauſe in the houſe of lords (Lord *Forbes* v. *Nelſon*); the next was a Yorkſhire cauſe before Lord Chancellor King (*Blades* v. *Blades*). There may poſſibly have been caſes upon notice diveſted of fraud, but then the proof muſt be extremely clear.

It is only in caſes of fraud the court have broke in upon the act; though one incumbrance was regiſtered before another.

But though in the preſent caſe there are ſtrong circumſtances of notice before the execution of the mortgage, yet upon mere ſuſpicion only I will not overturn a poſitive law.

The firſt evidence is Elizabeth Hine; but I cannot lay any great ſtreſs upon her depoſition:—it is only an account of a converſation at the Devil Tavern, where the plaintiff was preſent with Dodd and Burton, the agent of Dodd.—The next is Thomas Price, who ſwears, that the plaintiff told Burton he knew of this judgment before Dodd's mortgage, and that defendant Dodd did not deny what the plaintiff ſaid to Burton; but then he does not ſwear that Dodd heard what the plaintiff ſaid.

The moſt material evidence is Sarah Hine, who was preſent with the plaintiff Burton and Dodd on the 18th June 1738, at a meeting, in order to adjuſt all matters in difference between them. She ſwears that the plaintiff then charged Dodd with notice of the judgment, prior to the execution of the mortgage,

"and the meaning of the ſtatute was to prevent "parol proofs of notice, or not notice."

Not

gage, and that Dodd anſwered it was true he knew of the judgment, but that he knew at the ſame time it was not regiſtered; and what were acts of parliament for, unleſs they were effectually obſerved?

Undoubtedly this is a material evidence; but then it is only one witneſs againſt the anſwer of the defendant.—It is true his anſwer is very looſe, by referring from one anſwer to another; but in the laſt he ſwears to his belief, that he did not know of the judgment till after the mortgage was executed.

So that there is barely the evidence of a defendant's confeſſion, in contradiction to his anſwer, and contrary to a poſitive act of parliament, *made to prevent any temptation to perjury from contrariety of evidence.*

Some ſtreſs has been laid upon Burton's being an agent of Dodd, and likewiſe the ſolicitor in the caſe of Hine and Proof; but as this ſuit was two years before Dodd's mortgage, it will not affect Dodd with notice. *But what weighs principally with me is, the great danger of overturning an act of parliament, and making it mere waſte paper.*

Clear notice is a proper ground for relief; but ſuſpicion of notice, though a ſtrong one, will not juſtify the court in breaking in upon an act of parliament.

To be ſure, apparent fraud, or clear and undoubted notice, would be a proper ground of relief; but ſuſpicion of notice, though a ſtrong ſuſpicion, is not ſufficient to juſtify the court in breaking in upon an act of parliament.

His lordſhip therefore decreed, ſo far as the plaintiff's bill ſeeks relief by poſtponing the defendant Dodd's mortgage to the plaintiff's judgment, that it be diſmiſſed without coſts. But being doubtful as to the conſideration of the mortgage, he referred it to a Maſter to take an account of what was juſtly and *bonâ fide* due to the defendant Dodd before, and at the time the mortgage was executed; but would not direct the

inquiry

Not only endleſs perjuries, but uncertainty of ſafety to purchaſers and mortgagees, in an extreme degree, would ariſe from a contrary doctrine, and nothing but the deciſion on the caſe of Wrightſon and Hudſon could have emboldened the plaintiff in that now before us to ſtep forward for redreſs. If any determination oppoſite to the one expreſſed in the latter inſtance had obtained on the queſtion therein agitated, then indeed would the ſtatutes for regiſtry be reduced, according to the expreſſion of Lord Hardwicke, into *mere waſte paper:* in proof of which I ſhall here tranſcribe the imperative language contained in the ſtatute for Middleſex, in relation to the regiſtering of judgments, (which deſcription of ſecurity the plaintiff's was,) and leave further comment to my readers. "And "be it further enacted by the authority aforeſaid, "that no judgment, ſtatute, or recognizance, "other than ſuch as ſhall be entered in the name "and upon the proper account of her majeſty, "her heirs and ſucceſſors, which ſhall be obtained, "or entered into after the ſaid twenty-ninth day of "September in the ſaid year of our Lord one "thouſand

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inquiry as to the ſums of money pretended to be advanced by him after the mortgage; becauſe there was no poſitive evidence as to the ſums advanced afterwards, but only hear-ſay, and information from the defendant Dodd that ſuch an one heard him ſay, and another was informed by him that he paid part of the conſideration after the mortgage was executed.

" thouſand ſeven hundred and nine, ſhall affect, " or bind any honors, manors, lands, tenements, " or hereditaments, ſituate, lying, and being in " the ſaid county of Middleſex, *but only from the* " *time that a memorial of ſuch judgment, ſtatute,* " *or recognizance, ſhall be entered at the ſaid* " *Regiſter's office.*"

The caſe of *Le Neve* verſus *Le Neve*, 1 Vez. 64. and 3 Atk. 254. (*e*) alſo decided by Lord Hardwicke, on

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(*e*) *Le Neve* v. *Le Neve.—December* 9, 1748.

The cauſe ſtood for judgment.

The agent of the defendant having full notice of the firſt articles, made on her huſband's firſt marriage; this is notice likewiſe to her, and is alſo a ſufficient equity in the plaintiffs to poſtpone the ſecond articles and ſettlement, notwithſtanding theſe only have been regiſtered.

Lord CHANCELLOR.—The bill was brought by the plaintiffs Peter Le Neve and Hugh Pigott, and Elizabeth his wife, late Elizabeth Le Neve, as the only ſurviving children of the defendant Edward Le Neve, by Henrietta his late wife, deceaſed.

The end of the bill was, in general, to have the execution of a truſt of leaſehold eſtates ſettled upon the late wife of Edward Le Neve, and the iſſue of that marriage, by articles previous to the marriage, dated July 1, 1718, and that the conveyances made by the defendant Edward Le Neve, and the defendant Mary his wife to two truſtees, may be ſet aſide and delivered up as voluntary, being made after notice of the articles of July 1, 1718, or of the other conveyances made in purſuance thereof, and to have the leaſehold eſtates exonerated and diſencumbered.

The facts were, that in 1718 the defendant Edward Le Neve intermarried with his firſt wife Henrietta Le Neve, who had a conſiderable fortune, and articles were executed previous to the

on *Dec.* 9, 1748, comes next in ſucceſſion, and I beg to recommend the attentive peruſal of it; as the

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the marriage, dated July 1, 1718; whereby the father of Edward, in conſideration of Henrietta's fortune, &c. covenanted with truſtees to convey to them ſeveral eſtates, and ſome leaſehold, amongſt the reſt, near Soho-ſquare, in the county of Middleſex; to permit Edward Le Neve the younger to receive the rents and profits during his own life, and after his death to pay to Henrietta 250l. a year, in caſe ſhe ſurvived Edward: and, after the deceaſe of Edward and Henrietta, that the ſaid eſtates ſhould remain to their iſſue, in ſuch manner as Edward the younger ſhould, by will or otherwiſe, appoint; and, for want of ſuch iſſue, to the uſe of Edward Le Neve, the father, and his heirs.

The 16th June 1719, a ſettlement was made, in purſuance of the articles.

The marriage took effect, and Edward and Henrietta had iſſue the plaintiffs Peter and Elizabeth; and Henrietta died in July 1740, leaving no other children.

Twenty-five years after the firſt marriage, Edward Le Neve entered into a treaty of marriage with the defendant Mary; and, by articles dated Nov. 16, 1743, previous to the marriage, Edward, in conſideration of ſuch marriage, covenanted with the truſtees, the defendants Dandridge and Norton, to convey theſe very leaſehold eſtates near Soho-ſquare to them, their executors, &c. within three months after the marriage, in truſt to pay the defendant Mary, out of the rents of theſe meſſuages, in caſe ſhe ſurvived him, a clear annuity of one hundred and fifty pounds for her life, for her jointure, &c.

The marriage took effect, and, three months after, on the 20th Jan. 1743, a ſettlement was made, purſuant to the articles.

The ſettled eſtate, conſiſting of houſes in Middleſex, was ſubject to the Regiſter Act of 7 Ann. c. 20.

the regiſtering acts, and ſeveral previous deciſions upon them are therein treated much at large.—Indeed

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The ſecond articles and ſettlement were regiſtered, but not the firſt.

Edward Le Neve mortgaged the houſes likewiſe.

The bill was brought in order to ſet the ſecond articles and ſettlement out of the way, and that they may be poſtponed to the firſt articles and ſettlement, upon this equity that the defendant, Mary Le Neve, had notice of them.

The counſel for the plaintiffs admit, that the regiſtering the ſecond articles and ſettlement have, in point of law, affected the leaſehold eſtates; as the ſtatute of the 7th of Ann gives the legal eſtate where the effect of the regiſtering act has placed it.

Then the queſtion is, whether equity will enable the children of the firſt marriage to get the better of the defendant's legal right; and this will depend upon the queſtion of *notice*.

Firſt, Whether it appears ſufficiently Joſeph Norton was attorney for the defendant Mary, in the tranſaction of her marriage.

Secondly, Whether Norton himſelf had ſufficient notice of the firſt articles and ſettlement.

Thirdly, Whether that will affect Mary, as a purchaſer, and poſtpone her articles and ſettlement, notwithſtanding the Regiſter Act.

The firſt will depend upon the anſwer of the defendant Mary.—She has in general denied any notice of the firſt articles and ſettlement till ſix months after the marriage, and ſays, "that the defendant Joſeph Norton was ſo far from "being employed as ſolicitor for her in tranſacting the bu- "ſineſs of the marriage articles and ſettlement, that he had "been for a conſiderable time before employed as an attorney "for Edward Le Neve her huſband; that, being at the time

"of

Indeed it forms of itſelf an almoſt perfect compendium of caſes on the ſubject of regiſtration. Its

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" of marriage concerned for her huſband, ſhe was thereupon " induced to place confidence in him, and her huſband aſſured " her he would take care there ſhould be a handſome pro- " viſion made for her, and recommended Norton as a proper " perſon to prepare the deeds, whereby ſuch ſettlement was " to be made upon her; to which ſhe conſented; and that " Norton aſſured her, that he had taken care to ſecure her " one hundred and fifty pounds a-year, by way of jointure; " and did not then, or at any time before her intermarriage, " give her any notice of any former ſettlement."

It has been inſiſted by the defendant Mary's counſel that Joſeph Norton was not her attorney, or agent, but her huſband's; and that the attorney for one party having notice, will not affect her with notice.

I am of opinion, ſhe has admitted enough of her ſide to make him attorney, or agent, for her; for if ſhe placed confidence in Joſeph Norton, no matter on whoſe recommendation; if ſhe relied enough on her huſband to take his recommendation, it is ſufficient:—or otherwiſe it would be miſchievous and inconvenient, if this court was to take into their conſideration from whom the recommendation comes; for in purchaſes, but more eſpecially in mortgages, very frequently the ſame counſel and agents are employed on both ſides, and therefore each ſide is affected with notice, as much as if different counſel and agents had been employed.

As in purchaſes, and eſpecially in mortgages, the ſame counſel and agents are frequently employed on both ſides; therefore each ſide is affected with notice, as much as if different counſel and agents had been employed.

It is material how far the caſes have gone on this point: two have been cited, *Brotherton* verſus *Hatt*, 2 Vern. 574. and *Jennings* verſus *Blincorne* and others, 2 Vern. 609. The

Its determination has not, in my idea, the ſemblance of ſtrict juſtice; but as I diſcover it referred to

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firſt was ſhortly this, A. makes three ſeveral mortgages to B. C. and D.; and in the laſt mortgage B. is a party, and agrees, that after he is paid, he will ſtand a truſtee for D. Decreed, that C. ſhould be paid before D.: for, all the ſecurities being tranſacted by the ſame ſcrivener, notice to him was notice to D.

See how far this goes; the ſame ſcriveners were witneſſes, and engroſſed all the ſecurities, and were in nature of agents for all the lenders, and very likely for the borrower himſelf; and, notwithſtanding it does not appear Mrs. Hatt had perſonal notice, yet *notice to the agent is notice to the party, and conſequently they that lend laſt muſt come laſt, having notice of what was before lent; and if any one, after notice, lend more money, although they ſhould obtain the legal eſtate, yet would in equity ſtand affected with the notice, and bound thereby.*

The ſecond caſe was no more than this: *Blincorne*, having notice of an incumbrance, purchaſes in the name of *Moore*, and then agrees that *Moore* ſhall be the purchaſer, and he accordingly pays the purchaſe money, without notice of the incumbrance; though *Moore* did not employ *Blincorne*, nor knew any thing of the purchaſe till after it was made, yet *Moore* approving it afterwards, made *Blincorne* his agent *ab initio*; and, therefore, ſhall be affected with the notice to *Blincorne*.

The laſt goes a great way; for Moore knew nothing of the tranſaction; and yet the court held that his approving of it afterwards, made Blincorne his agent *ab initio*. This carries it further than the preſent: but the firſt is a clear authority.

Theſe caſes therefore ſufficiently prove, it is not at all material to the plaintiffs on whoſe advice or recommendation the defendant

to in a publication of high authority, I mean the notes of Meſſrs. Hargrave and Butler on Co. Lit, 1ſt

defendant Mary intruſted Norton; nor does it make any difference that it is the recommendation of the huſband, any more than of any other perſon.

The ſecond conſideration will be, if it appears clearly that Norton was employed by the defendant Mary, then whether there is ſufficient evidence of notice to him.

Where a fact is denied by an anſwer, and ſworn to by one witneſs only, that being but oath againſt oath, it cannot prevail to eſtabliſh the fact; but then the denial muſt be clear, otherwiſe it makes a difference.

An objection has been taken by the defendant Mary's counſel, that as notice hath been denied by her anſwer, if it is ſworn to by one witneſs only, that being but oath againſt oath, it cannot prevail to eſtabliſh the fact.

The general rule, to be ſure, is ſo; but it admits of this diſtinction, where the denial of a defendant is clear it has been adhered to; but where the anſwer is not a poſitive denial of the ſame fact, but only as to part, as in the preſent caſe, as to the notice to herſelf only, it makes a difference.

Many caſes where the court have decreed upon the teſtimony of one witneſs, when what he ſwears is uncontradicted by the anſwer.

And there are many caſes where the court upon the teſtimony of one witneſs, whoſe credit is unimpeached, and what he ſwears uncontradicted by the anſwer, have decreed upon this ſingle evidence.

The defendant Mary denies notice to herſelf, but whether there was notice to another perſon, her agent, ſhe paſſes by without giving any anſwer.

Denying notice as to herſelf only, is a negative pregnant there was notice to her agent.

This is a denial, indeed, as to herſelf; but is at the ſame time what is called at law a negative pregnant that there was notice to her agent.

1ſt Inſt., I ſhall give the ſtricture of the learned authors, inſtead of obtruding any text of my own.

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As to the evidence of notice to Norton it is extremely ſtrong; for he ſwears, that he had notice of the firſt articles ſome time before the ſecond marriage, and that he had then a copy thereof from the defendant Edward Le Neve, in order to take counſel's opinion thereon how to be ſecure againſt the effect of them, and to contrive in what manner they might get the better of theſe articles: and therefore, as to Norton, there cannot be a ſtronger notice.

See Sheldon v. Cox and others, Amb. Rep. p. 624.

The third, and laſt queſtion is, whether the notice to Norton will affect the defendant Mary, as a purchaſer, and poſtpone her articles and ſettlement, notwithſtanding the Regiſter Act. This depends upon two things:

Firſt, Whether any notice whatſoever would be ſufficient to take from the defendant, Mary Le Neve, the benefit of the Regiſter Act.

Secondly, Whether perſonal notice to the defendant Mary is requiſite to poſtpone her, or whether notice to her agent is ſufficient to do it likewiſe.

As to the firſt, it is a queſtion of great extent and conſequence.

The preamble to the ſtatute of 7 Ann. c. 20. is in ſubſtance.—

" Whereas, by the different and ſecret ways of conveying " lands, &c. ſuch as are ill-diſpoſed have it in their power to " commit frauds, and frequently do ſo, by means whereof " ſeveral perſons have been undone in their purchaſes and " mortgages by *prior and ſecret conveyances*, and fraudulent " incumbrances."

Then comes the enacting clauſe.—" That a memorial of " all deeds and conveyances which, after the 29th of Sep- " tember 1709, ſhall be made and executed; and of all " wills and deviſes in writing whereby any honors, manors,

" lands,

It is there obſerved, that "amongſt the attempts "made by our legiſlature at different times to re- "medy

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"lands, &c. in the county of Middleſex, may be any way "affected, in law, or equity, may be regiſtered in ſuch man- "ner as is after directed: and that every ſuch deed, or con- "veyance, that ſhall at any time after, &c. be made and "executed, ſhall be adjudged fraudulent and void againſt any "ſubſequent purchaſer or mortgagee, for a valuable conſider- "ation, unleſs ſuch memorial thereof be regiſtered, as by "this act is directed, before the regiſtering of the memorial "of the deed or conveyance under which ſuch ſubſequent "purchaſer or mortgagee ſhall claim," &c.

The intent of the Regiſter Act to ſecure ſubſequent purchaſers againſt prior ſecret conveyances.

What appears by the preamble to be the intention of the act? Plainly to ſecure ſubſequent purchaſers and mortgagees againſt *prior ſecret conveyances* and fraudulent incumbrances!

If a ſubſequent purchaſer had notice of a prior conveyance, then that was not a *ſecret conveyance.*

Where a perſon had no notice of a prior conveyance, there the regiſtering his ſubſequent conveyance ſhall prevail againſt the prior; but if he had notice of a prior conveyance, then that was not a ſecret conveyance by which he could be prejudiced.

The enacting clauſe gives a ſubſequent purchaſer the legal eſtate, but it does not ſay he is not left open to any equity which a prior purchaſer or incumbrancer may have.

The enacting clauſe ſays, *that every ſuch deed ſhall be void againſt any ſubſequent purchaſer or mortgagee, unleſs the memorial thereof be regiſtered, &c.* that is, it gives them the legal eſtate; but it does not ſay, that ſuch ſubſequent purchaſer is not left open to any equity, which a prior purchaſer or incumbrancer may have; for he can be in no danger where he knows of another incumbrance, becauſe he might then have ſtopped his hand from proceeding.

" medy the miſchief ariſing from the ſecret transfer " of property, may be reckoned the ſtatutes againſt " fraud-

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This caſe has been very properly compared to caſes on the 27 Henry VIII. for the inrolment of bargains and ſales.

That act was formed pretty much in the ſame manner with this. The words of the enacting clauſe are, " that from, &c. " no manors, lands, tenements, &c. ſhall paſs, alter, or " change from one to another, whereby any eſtate of inherit- " ance or freehold ſhall be made, or take effect in any " perſon or perſons, *or any uſe thereof* to be made by reaſon " only of any bargain and ſale thereof, except the ſame bar- " gain and ſale be made by writing indented, ſealed, and " inrolled in one of the king's courts of record at Weſtmin- " ſter, or elſe within the ſame county, &c. where the ſame " manors, &c. ſo bargained and ſold lie, &c.; and the ſame " inrolment to be had and made within ſix months next after " the date of the ſame writings," &c.

" *Nor any uſe thereof ſhall paſs from one to another.*"

What is the meaning of this?—

Before the making of the act, any paper writing paſſed the uſe from the bargainor to the bargainee, whereby great miſchiefs aroſe, for it entangled purchaſers, affected and injured the crown, and was contrary to the rule of law, which required notoriety in purchaſes, by feoffment and livery, &c.

Under the ſtatute for inrolment of deeds, if a ſubſequent bargainee has notice of a prior, he is equally affected with that notice, as if the prior purchaſe had been a conveyance by feoffment and livery, &c.

But what has been the conſtruction of this ſtatute ever ſince? Why, if a ſubſequent bargainee has notice of a prior, he is equally affected with that notice, as if the prior purchaſe had been a conveyance by livery, &c.

The

" fraudulent conveyances and deviſes, 13 *Eliz.* c. 5.
" 27 *Eliz.* c. 4. and 3 *Will. & Mary*, c. 14.;
" but

To let a perſon take advantage of the legal form appointed by an act of parliament, and protect himſelf againſt another who had a prior equity, of which he had notice, would be of miſchievous conſequence.

The operation of both acts of parliament, and conſtruction of them, are the ſame; and it would be a moſt miſchievous thing if a perſon, taking the advantage of the legal form appointed by an act of parliament, might, under that, protect himſelf againſt a perſon who had a prior equity, *of which he had notice.*

The caſes put by the attorney-general are very material.

Suppoſe, ſaid he, the defendant Mary had, by letter of attorney, empowered Norton to tranſact the affair with her huſband, and he, by means of this agency, comes to the knowledge of the prior articles and ſettlement, would not this affect the principal? Or ſuppoſe a purchaſer of lands in a Regiſter county orders his attorney to regiſter it, and he neglects to do it, and then buys the eſtate himſelf, and regiſters his own conveyance; ſhall this be allowed to prevail? It certainly ſhall not; for ſuch a perſon is out of the conſequences which the Regiſter Act guards againſt, of impoſition from a *prior ſecret conveyance*, as he had perſonal knowledge of the firſt.

There have been three caſes on the Regiſter Act.

Firſt, *Lord Forbes* and *Nelſon*.

Secondly, *Blades* verſus *Blades*, Eq. Ca. Abr. 358.

Thirdly, *Chival* verſus *Nichols*, Dec. 10, 1725, in the Exchequer.

The firſt aroſe originally in Ireland, where there is a general Regiſter Act, and heard on an appeal to the Houſe of Lords in England, the 22d and 23d of February 1722.

The Earl of Granard, father of Lord Forbes, was ſeiſed of a large eſtate, of which he was tenant for life, with remainder

to

" but particularly the ſtatute of 29 *Car.* II. c. 3. " commonly called the ſtatute of frauds and per- " juries,

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to his firſt and every other ſon in tail, and had a power of leaſing for lives, at the beſt rent.

The Regiſter Act in Ireland paſſed the 6th of Queen Ann.

Lord Granard granted a leaſe for three lives, at the rent of thirty pounds a-year, but it was not regiſtered. His lordſhip being greatly in debt came to an agreement with Lord Forbes, his eldeſt ſon, by the agency of Mr. Steward, to take upon him the payment of certain debts of his father, and to ſecure a jointure to his mother-in-law, and an annuity to his father. The eſtate was conveyed to truſtees, Mr. Juſtice Doyne and Mr. Juſtice Nutt, during the life of the father. Mr. Steward had notice of this leaſe, during the treaty between Lord Granard and Forbes. The conveyance to the truſtees being regiſtered, they brought an ejectment againſt the leſſee of the lifehold eſtate, and it was heard before Lord Middleton, Chancellor of Ireland, in February 1721, who then made a declaration, rather than a decree, that the conveyance was void as againſt the leſſee. It came on again before him the 17th February 1721-2; and he then determined there was full notice of the leaſe to Lord Forbes, and awarded a perpetual injunction from time to time. The judgment of the Houſe of Lords was, that the ſaid decree be reverſed; and that all proceedings at law of the appellants againſt the reſpondents ſhould, during the life of Lord Granard, be ſtayed, on the leſſees paying the rents, performing the covenants, &c.; but that, after the death of Lord Granard, Lord Forbes might be at liberty to try the tenants right to the leaſe.

The decree was reverſed, not becauſe Lord Middleton had proceeded upon a wrong principle, but had drawn a wrong inference from it; for Lord Forbes did not inſiſt merely on the regiſter, but that the leaſe was made contrary to the power, and

" juries, which provides againſt conveying any " lands or hereditaments for more than three " years,

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and therefore the Lord Chancellor of Ireland was miſtaken, and wrong in decreeing the leaſe to be good in every reſpect; and the Houſe of Lords ſet the decree right only as to this particular part, that, after the death of Lord Granard, the eſtate would determine; and therefore it was left open to Lord Forbes to diſpute, whether it was a leaſe purſuant to the power; but gave no relief as to the Regiſter Act.

The caſe of *Blades* v. *Blades* came before Lord Chancellor King the 2d of May 1727. William Blades in 1716 deviſed certain lands to his wife for her life, and, after her death, to his nine children; the wife enters, but does not regiſter the will. The heir at law mortgages the eſtate, and the mortgagee has it regiſtered; and, upon a bill brought againſt him, denies notice of the will; but it was proved in evidence, that he had notice; and the court ſaid that having notice of the firſt purchaſe, though it was not regiſtered, bound him, and that his getting his own purchaſe deed firſt regiſtered was a fraud: the deſign of thoſe acts being only to give parties notice, who might otherwiſe, without ſuch regiſtry, be in danger of being impoſed on by a prior purchaſe or mortgage, which they are in no danger of when they have any notice thereof, in any manner, though not by regiſtry. And that they would never ſuffer an act of parliament, made to prevent fraud, to be a protection to fraud; and therefore decreed for the plaintiff, looking upon the tranſaction between the heir at law and the mortgagee to be colluſive.

I mention this, not only as a material authority, but as determined by Lord Chancellor King, whom we all know was as willing to adhere to the common law as any judge that ever ſat there.

Lord King as inclinable to adhere to the common law, as any judge that ever ſat in Chancery.

The

" years, or declaring truſts of them, otherwiſe " than by writing. *With the ſame views have been* " *paſſed*

The other caſe of *Chival* v. *Nicholls*, was in the court of Exchequer, the 10th of Dec. 1725, before Lord Chief Baron Gilbert, and is a clear authority for giving relief againſt the Regiſtry Act upon an equity of notice; but then there were charges of fraudulent circumſtances beſides, and therefore is not ſo ſimilar to the preſent.

The ground of the determination in theſe caſes is, that the taking of a legal eſtate after notice of a prior right, makes a perſon a malâ fide purchaſer, and is a ſpecies of fraud, and agrees with the definition of dolus malus in the civil law.

Conſider therefore what is the ground of all this, and particularly of thoſe caſes which went on the foundation of notice only; for Lord Forbes was on notice only, and notice too to the agent. The ground of it plainly is this, that the taking of a legal eſtate after notice of a prior right makes a perſon a malâ fide purchaſer, (and not that he is not a purchaſer for a valuable conſideration in every other reſpect,) this is a ſpecies of fraud, and dolus malus itſelf; for he knew the firſt purchaſer had the clear right of the eſtate; and, after knowing that, he takes away the right of another perſon by getting the legal eſtate. And this exactly agrees with the definition of the civil law of dolus malus. Dig. lib. 4. tit. 3. lex 2. Dolum malum ſervius ita definit. Machinationem quandum alterius decipiendi cauſa, cum aliud ſimulatur, et aliud agitur: labeo autem, poſſe et ſine ſimulatione id agi, ut quis circumveniatur: poſſe et ſine dolo malo aliud agi, aliud ſimulari; ſicuti faciunt, qui per ejuſmodi diſſimulationem deſerviant, et tuentur vel ſua vel aliena. Itaque ipſe ſic definivit, dolum malum eſſe omnem callidatem, fallaciam, machinationem, ad circumveniendum, fallendum, decepiendum alterum adhibitam. Libeonis definitio vera eſt.

Now,

" paſſed the acts for regiſtering deeds reſpecting " lands in the Weſt, Eaſt, and North Ridings of the " county

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Now, if a perſon does not ſtop his hand, but gets the legal eſtate, when he knew the right in equity was in another, *machinatur ad circumveniendum*; and it is a maxim too in our law, that fraus et dolus nemini patrocinari debent.—Co. 3 Rep. 78. b.

A maxim in our law that fraus et dolus nemini patrocinari debent.

Fraud, or malâ fides, therefore, is the true ground on which the court is governed in the caſes of notice, and it is a conſequence of the deciſion of the former queſtion that notice to the agent is ſufficient; for if the ground is the fraud or malâ fides of the party, then it is all one whether by the party himſelf, or his agent, ſtill it is machinatio ad circumveniendum: and the putting a copy of the firſt articles and ſettlement into Norton's hands, to take the opinion of counſel in what manner they could be ſet aſide, is a contrivance to circumvent.

If the ground is the fraud, or malâ fides of the party, it is all one, whether by the party himſelf or his agent; ſtill it is machinatio ad circumveniendum.

It has been ſaid, if this woman has been impoſed on by her huſband, ſhe, inſtead of cheating, has been cheated. But then who ought to ſuffer? The perſon intruſting an agent, or a ſtranger who did not employ him? He certainly who truſts moſt, ought to ſuffer moſt.

He certainly who truſts moſt, ought to ſuffer moſt.

Mrs. Hatt, the third mortgagee in the caſe in 2 Vern. mentioned before, was impoſed on; and ſo was Moore in the other caſe reported there clearly impoſed on; and yet, if this was to be any excuſe, it would make all the caſes of notice very precarious; for it ſeldom happens but the agent has impoſed on his principal, and, notwithſtanding that,

If the principal's being impoſed on by his agent was admitted as an excuſe, it would make all the caſes of notice very precarious; for it ſeldom happens but the agent has impoſed on his principal.

" *county of York, and in the county of Middleſex.*
" Upon a ſimilar principle was paſſed the ſalutary
" and beneficial act of the 17th of his preſent
" Majeſty, c. 26. for regiſtering *(generally deno-*
" *minated inrolling)* the grants of life annuities.
" On the ſtatute of the 29 *Car.* II. c. 3. the
" courts have decided that, as it was made with a
" deſign to prevent, either in marriage, or in any
" other treaties, uncertainty, perjury, and con-
" trariety of evidence, the caſes not liable to theſe
" inconveniencies are not within it. *The courts*
" *ſeem to have favoured a like equitable conſtruc-*
" *tion of the ſtatutes for the regiſtration of deeds.*
" *Thus, in the caſe of Le Neve and Le Neve,* 1 *Vez.*
" 64. *Lord Hardwicke decreed that, if a deed re-*
" *ſpecting lands in any of the regiſtering counties is*
" *not regiſtered, and afterwards the ſame lands are*
" *ſold, or mortgaged by a deed properly regiſtered,*
" *if the perſon claiming under the ſecond deed has*
" *notice of the firſt deed, the perſon claiming under*
" *the firſt deed, though it is not regiſtered, ſhall be*
" *preferred to him.* The general doctrine of theſe
" deci-

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that, the perſon truſting ought to ſuffer for his ill-placed confidence. Therefore in both reſpects, as agent and truſtee, notice to Joſeph Norton is notice to the defendant Mary likewiſe; and alſo as to the Regiſtry Act, here is a ſufficient equity in the plaintiff to poſtpone the ſecond articles and ſettlement, notwithſtanding theſe only have been regiſtered. And his lordſhip decreed accordingly.

" deciſions is founded upon principles both juſt
" and equitable, when applied to particular caſes;
" yet it may be doubted, whether a more rigid
" adherence to the letter of theſe ſtatutes, parti-
" cularly that of the 29 *Car.* II. c. 3. would not
" have been more beneficial to the public. The
" French ſhewed a much more rigid and pertina-
" cious adherence to the letter of their laws
" reſpecting the regiſtration of deeds and wills.
" By laws of that kingdom, as ancient as the
" 16th century, particularly an ordonnance of
" Henry II. of the year 1553, it was ordered,
" that all wills and deeds, containing ſubſtitutions
" of eſtates, ſhould be regiſtered within a parti-
" cular period of time. If they were not re-
" giſtered within that time, the courts ſeem to
" have doubted whether they were binding even
" on the parties in whoſe favour the ſubſtitutions
" were made: but it was always ſettled that the
" ſubſtitutions were of no force againſt creditors
" or purchaſers. Several points of the laws re-
" ſpecting ſubſtitutions being unſettled, and the
" laws reſpecting them being different in different
" parts of the kingdom, they were all reduced
" into one law by the celebrated ordonnance of
" 1747. That ordonnance was framed by the
" Chancellor d'Agueſſeau, after taking the ſenti-
" ments of every parliament in the kingdom upon
" forty-five different queſtions propoſed to them
" upon the ſubject. The thirty-ninth queſtion is

" Whe-

" Whether a creditor or purchaſer, having notice " of the ſubſtitution before his contract or pur- " chaſe, is to be admitted to plead the want of " regiſtration. All the parliaments, except the " parliament of Flanders, agreed that he was; " that to admit the contrary doctrine would make " it always open to argument whether he had or " had not notice of the ſubſtitution: *that this* " *would lead to endleſs uncertainty, confuſion, and* " *perjury: and that it was much better the right* " *of the ſubject ſhould depend upon certain and* " *fixed principles of law, than upon rules and* " *conſtructions of equity, which muſt be arbitrary,* " *and conſequently uncertain.* The ordonnance " of *Auguſt* 1747 was framed accordingly. Thoſe " who have commented upon that ordonnance " lay it down as a fixed and undeniable principle " that nothing, not even the moſt actual and " direct notice, countervails the want of regiſtra- " tion; ſo that if a perſon is a witneſs, or even a " party to the deed of ſubſtitution, ſtill, if it is " not regiſtered, he may ſafely purchaſe the pro- " perty ſubſtituted, or lend money upon mortgage " of it."

From the caſes cited in the report of Le Neve and Le Neve may ſurely be deduced the moſt forcible arguments of the neceſſity and utility of the ſtatutes for regiſtry, as affording a ſalutary and eaſy means to eſcape error and uncertainty, through the medium of the correct indexes kept in all the

offices, the inſpection of which muſt produce poſitive ſecurity, where no previous notice can be eſtabliſhed. The beneficial effects intended by the legiſlature have, I fear, been paralyzed by the deviations from their ſtrict letter, which the foregoing animadverſion relates; but, even in their relaxed comprehenſion, their utility will not be denied by thoſe who are acquainted with them practically. It will, perhaps, be aſſerted that ſuch animadverſion is indicative merely of doubt, and applies more immediately to the ſtatute of frauds and perjuries. If it ſtood without the context, I ſhould agree that no great advantage was obtainable by its ſtatement; but the quotation of the French journal is a very ſtrong implication of the authors' opinion that the laws for regiſtry, *in their literal ſenſe*, are more advantageous to the ſubject than the ſyſtem developed by the equitable determinations thereon. Taking however theſe determinations as the fixed rule for calculation, which is certainly to be recommended, the deductions to be made from them are, *that a perſon, being a ſubſequent purchaſer or mortgagee for a valuable conſideration, whoſe incumbrance is duly regiſtered, may be defeated in his ſecurity by the holder of a firſt incumbrance not regiſtered, provided it can be proved that ſuch ſubſequent claimant, or even his attorney or agent, had notice before his advancing his money that ſuch firſt incumbrance was exiſting*; in con-

 tradiction

tradiction to the expreſſions of the ſtatutes, which ſay, that "every ſuch firſt incumbrance ſhall be "adjudged fraudulent and void againſt any ſub- "ſequent purchaſer or mortgagee for a valuable "conſideration, unleſs a memorial thereof be re- "giſtered:" *but where a perſon has no notice of a prior conveyance or incumbrance, and it is not regiſtered, then that the regiſtering the ſubſequent conveyance or incumbrance, ſhall prevail againſt, and ſuperſede the prior one.*

Since the latter deciſion of Lord *Hardwicke*, a lapſe of almoſt fifty years, I find only two caſes relative to regiſtration worth detailing. The firſt is *Morecock* v. *Dickins* and others, *on an appeal from the Rolls*, Amb. Rep. p. 678. (*f*); in the deciſion

(*f*) *Morecock* v. *Dickins* and others.—*November* 19, 1768.

Upon appeal from the Rolls.

Regiſtration in Middleſex of an *equitable* mortgage is not preſumptive notice of itſelf to a ſubſequent *legal* mortgagee, ſo as to take from him his legal advantage.

On 16th June 1749, *Henry Fandal* leaſed a piece of ground and buildings at Wapping, for fifty-one years to the defendant *George Wilſon*.

On the 23d February following, *George Wilſon* aſſigns the premiſes to the plaintiff *Morecock*, for the remainder of the term, to ſecure 800 l. and intereſt.

In 1751, *Morecock* went abroad, and left the mortgage deed in the hands of *Wilſon*, having firſt ſigned a receipt on the back of it, by which it appeared that *Morecock* had been repaid the principal and intereſt: and this tranſaction was ſtated in the bill

deciſion upon which the caſe of *Bedford* v. *Bacchus* is, for the firſt time, referred to, as having ſettled the

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bill to have paſſed at the requeſt of *Wilſon*, who apprehended he might want money to carry on trade in *Morecock*'s abſence; and promiſed that if he borrowed money thereon, he would repay it, and reſtore the mortgage to *Morecock*, clear of incumbrances.

In 1755, *Morecock* returned to England, and *Wilſon* delivered back the mortgage to him, without having borrowed any money upon it; where it remained till 1760, when he again truſted *Wilſon* with the mortgage deed and receipt, with a view, as ſtated in the bill, to enable *Wilſon* to borrow a large ſum of money upon ſecurity of the premiſes, out of which *Morecock* was to be paid.

In 1763, *Wilſon* mortgaged the premiſes to *John Athinſon* for 300l. and being preſſed by *Athinſon* for payment of the money, prevailed on *Morecock* to ſign a writing, by which he agreed to give *Athinſon* priority of his demand.

It did not appear in the cauſe whether the original leaſe was ever out of *Wilſon*'s cuſtody; or whether it was delivered to *Morecock* at the time of the mortgage, and ſent back to *Wilſon* with the mortgage deed; but it appeared to be in *Wilſon*'s hands in 1765, for on 24th January 1765, *Wilſon* ſurrendered up the leaſe, and took a new leaſe for 71 years.

On the 11th February 1765, *Morecock* and *Wilſon* ſettled their accounts, and there being a balance of 2065l. 5s. due to *Morecock*, it *was agreed* that the new leaſe ſhould ſtand as a ſecurity for 800l. and intereſt at all events; and *Wilſon* gave a bond and judgment for the remainder of the balance to be paid by inſtalments; but in caſe *Wilſon* ſhould neglect to make good any of the payments, it was agreed that *Wilſon* ſhould give *Morecock* a ſecurity for the ſame upon the premiſes.

This deed was regiſtered within a few days afterwards.

the doctrine reſpecting the efficiency or non-efficiency of the regiſter in conveying notice to the holder

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On 6th April 1765, *Wilſon* mortgaged the premiſes to defendant *Dickins* for 800 l. and intereſt; *and delivered to him the leaſe itſelf.* *Dickins* had no notice of plaintiff's ſecurity at the time he took the mortgage, but being afterwards informed of it, on 15th February 1766, gave *Morecock* a notice in writing that he would pay him 1000 l. on the 25th of March following, or as ſoon after as an aſſignment of *Wilſon*'s leaſe could be prepared, according to the agreement of the 11th of February 1765: and at the ſame time informed *Morecock* of the mortgage-aſſignment to himſelf of the 6th of April 1765.

Wilſon ſoon afterwards becoming bankrupt, nothing was done in conſequence of the notice.

Bill by *Morecock*, inter alia, to be paid the 800 l. agreed to be ſecured on the premiſes at all events, prior to the Defendant *Dickins*'s mortgage.

Bill by *Dickins* to be paid his mortgage money, or to foreclоſe.

The queſtion reſpecting this matter was, Whether *Dickins*, though he had not actual notice of *Morecock*'s ſecurity at the time he took the mortgage, ſhould be affected by a conſtructive notice, ariſing from the circumſtance of the deed being regiſtered at the time?

It was admitted by the counſel for *Morecock*, that *Dickins* having got the *legal* intereſt would be entitled to priority, unleſs he could be affected by notice. That there was no evidence of actual notice; but it was inſiſted that the regiſtration was notice of itſelf. That to give the regiſter act its proper and intended effect, the act of regiſtration ought to operate as notice; and it was compared to the caſe of judgments; that which is firſt docketed ſhall have priority.

On

holder of the legal eſtate. Although the aſſertion of Lord Hardwicke, " *that the regiſter act, the 7 Ann.* " *c.* 20,

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On the other ſide, it was argued for defendant *Dickins*, that the regiſtry act was made for one ſingle purpoſe, to give preference to a purchaſe deed regiſtered, before a prior deed not regiſtered; but the act gives no greater efficacy to deeds which are regiſtered than they had before. And the caſe of *Bedford* v. *Bacchus*, 26th November 1730, was cited for that purpoſe; where a firſt mortgagee of lands in Middleſex, having regiſtered his mortgage, lent a further ſum without actual notice of a ſecond mortgage, which had been regiſtered. Lord King, *Chancellor*, was of opinion that he ought not to be affected by ſuch conſtructive notice, but that the rule of equity took place, and the firſt mortgagee was entitled to be paid his whole money before the ſecond mortgagee.—That in the preſent caſe *Dickins* having got the *legal* intereſt, was entitled to be paid before a prior *equitable* incumbrancer, unleſs he was affected by notice. That here was no actual notice, and the regiſtration was not conſtructive notice, according to the above determination.

Lord CAMDEN, *Chancellor.*

Q. Whether regiſtration is preſumptive evidence to all mankind?

If this was a new point, it might admit of difficulty; but the determination in *Bedford* v. *Bacchus* ſeems to have ſettled it, and it would be miſchievous to diſturb it. The act provides for one ſingle caſe only, that is, to make unregiſtered deeds void againſt regiſtered deeds; but there is no proviſion by the act in a caſe where all the deeds are regiſtered. And yet it becomes a ſerious queſtion whether a Court of Equity ſhould not ſay that, in all caſes of regiſtry, which is a public depoſitory for deeds, and to which any perſon may reſort, a ſubſequent purchaſer ought not to

Chival v. Nicholls, Stra. Rep. 664.

" *c.* 20, *is notice to the parties, and notice to every* " *body*," is herein diſputed, it is obſervable that Lord *Camden* declares the authority, but not the equity of the deciſion upon which his decree is founded; and the following words atteſt pretty forcibly his private opinion of that deciſion, which he ſeems to purſue, *merely as a precedent*, againſt his better judgment. " *It becomes a ſerious queſ-* " *tion whether a Court of Equity ſhould not ſay* " *that in all caſes of regiſtry*, which is *a public de-* " *poſitory for deeds, and to which any perſon may* " *reſort, a ſubſequent purchaſer ought not to ſearch* " *or be bound by notice of the regiſtry, as he would* " *of a decree in equity or judgment at law.*"

There appear grounds for granting relief to *Dickins* in this caſe, foreign to every conſideration of regiſtry, and founded entirely upon *Morecock*'s aſſiſting

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ſearch, or be bound by notice of the regiſtry, as he would of a decree in equity, or judgment at law? It is a point in which a great deal of property is concerned, and is a matter of conſequence. Much property has been ſettled, and conveyances have proceeded upon the ground of that determination.— In the caſe of *Vandebendy*, in the *Houſe* of *Lords*, the doctrine about dower prevailed, becauſe it had been practiſed in a courſe of conveyance.—A thouſand neglects to ſearch have been occaſioned by that determination, and therefore I cannot take upon me to alter it. If it was a new caſe I ſhould have my doubts; but the point is cloſed by that determination, which has been acquieſced in ever ſince.

aſſiſting *Wilſon* in an attempt to defraud, by permitting the deed or deeds conſtituting a title to remain in his poſſeſſion; for the reaſonable preſumption of any perſon taking a ſecurity, and finding title deeds in the cuſtody of the grantor, muſt be that the property is unincumbered. I have not been able to learn what arguments were adduced on this caſe before the Maſter of the Rolls, from whoſe judgment the appeal was made; but it is certainly to be regretted that ſuch differences ſhould prevail on a queſtion of ſo much importance to the landed intereſt.

This determination, evidently leaning againſt the opinion of the learned authority whence it proceeds, is ſomewhat remarkable for its application to the ſolitary caſe of *Bedford* v. *Bacchus*, and not touching in the moſt diſtant manner upon any of thoſe more recently decided, and particularly on the one of *Hine* v. *Dodd*, where the aſſertion of Lord *Hardwicke*, before alluded to, is contradictory of the laſt expreſſion delivered by Lord *Camden*. It is almoſt impoſſible that this or any other of the deciſions on the queſtion of regiſtry could be unknown to the latter; and yet one would ſuppoſe a knowledge of them could hardly fail to produce animadverſion upon the contrariety of their doctrines.

The laſt caſe in the report books, which has any affinity to the ſubject under diſcuſſion, appears to be *Jolland* v. *Stainbridge*; determined before

the Maſter of the Rolls ſo recently as the 31ſt of July 1797 (*g*). Vez. jun. vol. 3. p. 478.

The

(*g*) *Jolland* v. *Stainbridge*, Rolls, July 14, 18, 21, 31.

A regiſtered conveyance of premiſes in Middleſex for valuable conſideration eſtabliſhed againſt a prior deviſe not regiſtered, the evidence of notice which ought to amount to actual fraud, not being ſufficient.

Edward Jolland, tenant in tail of certain houſes in *Half-moon Street*, and *Seven Star Court*, *Old Street*, in the county of *Middleſex*, under the will of *Robert Long*, dated the 2d of July 1731, by indenture of leaſe, dated the 20th of October 1785, in conſideration of a houſe having been built on part of the premiſes by *Daniel Hands*, under articles dated the 5th May 1784, and in conſideration of a fine of 20*l*. and the rents and covenant entered into and reſerved, demiſed the ſaid ground and newly erected houſe to *Daniel Hands*, his executors, adminiſtrators, and aſſigns, for ſixty-one years, under a rent of 10l. a-year, payable to *Edward Jolland*, his heirs and aſſigns. This leaſe was regiſtered according to the ſtatute 7 Anne c. 20. upon the 27th of October 1785. By deed poll indorſed upon the leaſe, and dated the 24th of February 1787. *Hands*, in conſideration of 300l. aſſigned to *William Loveday*, who, upon the 18th of January 1790, in conſideration of 300l. aſſigned to *John Palmer*. Upon the 27th of January 1790, the premiſes were put up to auction; and *William Stainbridge* was declared the beſt bidder at 270l. 18s. and paid a depoſit of 50l. On the 3d of February 1790, the aſſignments from *Hands* to *Loveday*, and from *Loveday* to *Palmer*, were regiſtered. By indenture, dated the 9th of February 1790, reciting the ſale, *Palmer* aſſigned to *Stainbridge*; under which aſſignment he was in poſſeſſion. That deed was regiſtered on the 27th of February.

After the death of *Edward Jolland*, *Sophia Jolland*, an infant, his only child, brought an ejectment claiming under the will

The caution to be derived from this may probably have a tendency to promote the more frequent

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will of *Robert Long* as iſſue in tail: but that will not having been regiſtered, the plaintiff was nonſuited. She then filed the bill, charging notice to *Hands* previous to the leaſe, and alſo to *Stainbridge* previous to his becoming entitled.

The defendant by his anſwer ſtated, that he purchaſed the ſaid leaſe, which, together with the ſaid ſeveral aſſignments, is in his cuſtody, and which have been all duly regiſtered, at a public ſale by auction, on or about the 27th of January 1790, for 270l. 18s. without any notice from any other perſon of the exiſtence of any claim in any perſon whatſoever; and he ſubmitted that, as he purchaſed the premiſes at a public auction for valuable conſideration, without any notice of the exiſtence of the plaintiff's title, or of the ſaid deviſe or will, when he paid his purchaſe money, the ſame is void. He does not know, or believe, and was never informed that, previous to the granting the leaſe, *Hands* or the perſon to whom it was granted had any notice; and believes he had no notice or intimation, or reaſon to believe or ſuſpect that *Robert Long* had made ſuch will, or that *Edward Jolland* was entitled under the will as tenant in tail only, or any notice or intimation to that effect: on the contrary, the defendant believes that he had no ſuch notice or ſuſpicion; ſince, if he had any ſuch notice or intimation, he would not have taken a building leaſe: but the defendant poſitively denies that this defendant, previous to his paying his ſaid conſideration money, upon the purchaſe of the ſaid leaſe, had any notice whatſoever, or the moſt diſtant intimation to that or the like effect: and he ſubmits that, as *Edward Jolland* pretended to be ſeiſed in fee, and was in poſſeſſion at the time of executing the leaſe, and as the leſſee and the meſne aſſignees paid valuable conſideration, as well as this defendant, and all the deeds were regiſtered, and this defendant

quent regiſtry of wills affecting property in the county of Middleſex; very few of which, proportioned

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defendant had no notice, intimation, or ſuſpicion of the plaintiff's alleged title or claim previous to the execution of the aſſignment and payment of the conſideration money, or of the exiſtence of any ſuch title as the complainant ſet up, and having duly paid the reſerved rent, and expended conſiderable ſums in improvements, and as the will of *Robert Long* was not regiſtered, the relief prayed will not be granted.

The evidence of notice was to the following effect:

Brayfield, book-keeper to the defendant *Stainbridge*, depoſed, that the wife of the defendant, about the beginning of 1790, told the deponent, in the preſence of the defendant, that Mrs. *Jolland* (mother of the plaintiff, and now Mrs. *Colton*) had that day been with the defendant, and deſired him not to have any thing to do with the eſtate, for that it belonged to her daughter, and the perſon who was about to diſpoſe of it had no right to ſell; and the defendant and his wife aſked the deponent whether he thought the defendant would be ſafe in purchaſing the eſtate at an auction; the deponent ſaid he thought the defendant would be ſafe if he purchaſed it at an auction.

Elizabeth Hands (widow of *Daniel Hands*) ſtated the leaſe to her huſband, and that he built a dwelling houſe, and he and his wife lived in the houſe; and the deponent from time to time paid the rent on behalf of her huſband to *Edward Jolland* for about a year or upwards; after which ſhe paid it to the agent of *Joſeph Allen*, to whom *Jolland* had mortgaged it, till the ſale to *Stainbridge*. *Hands*, previous to the leaſe to him and to the building the houſe, informed the deponent that he and *Branſcombe*, a broker, had been to *Doctors Commons*, and had there read the will of the perſon under whom *Edward Jolland* claimed the eſtate; and he and *Branſcombe* were well ſatisfied with the title. About nine years ago, *Hands* was ſentenced

portioned to the aggregate number, are regiſtered in exact compliance with the terms of the ſtatute.

The

ſentenced to be tranſported to Botany Bay, where he died. A ſhort time before that ſentence, *Loveday*, now deceaſed, out of friendſhip to, and to ſecure the eſtate for the benefit of the deponent, procured an aſſignment from *Hands*, which was afterwards executed by *Hands* in *Newgate*, and executed for the benefit of the deponent; and *Loveday* never paid any conſideration. The deponent delivered the leaſe to an attorney, for the purpoſe of having the aſſignment prepared; and the aſſignment and the leaſe were afterwards delivered to the deponent, and continued in her poſſeſſion for ſome time. She afterwards borrowed of *Palmer* 17 l. 17 s. and delivered the aſſignment and leaſe as a ſecurity; and about four or five months afterwards, the ſaid 17 l. 17 s. then remaining due to *Palmer*, he prevailed upon the deponent to have the eſtate ſold by auction; and it was ſold accordingly at the ſaid houſe where the deponent lived, and was purchaſed by *Stainbridge* for 270 l. 18 s. *Hands* had expended 300 l. upon the premiſes; and ſome time before the ſale *Moorſman* told the deponent he would have given 500 l.; but four or five months afterwards, at a meeting between the deponent, *Palmer*, *Stainbridge*, and *Morris*, an attorney, the deponent received 70 l., part of the purchaſe, and all ſhe ever got. A day or two previous to the auction, *Stainbridge* came to the deponent's houſe, and told her, Mrs. *Colton* (formerly Mrs. *Jolland*) had been with him, and informed him that the title to the ſaid leaſe of the ſaid eſtate was not a good one; and therefore ſhe thought it would not be right for him to purchaſe ſuch eſtate; and that he told her that, if he had a mind to purchaſe the ſaid eſtate, and run the riſk, it was nothing to any one. Previous to the auction the deponent went, by *Stainbridge*'s deſire, with him to the houſe

The caſes I have ſtated, ſome of them ſo different in their eſſence, have ſerved, inſtead of repreſſing

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houſe of *Morris*; when *Palmer* produced the leaſe and aſſignment, and *Morris*, reading them, told *Stainbridge* that, if he purchaſed the eſtate, he (*Morris*) would indemnify him.

Elizabeth M'Neale depoſed, that a few days previous to the ſale, *Anne Jolland* called to *Stainbridge*. as he was paſſing by the door, and told him ſhe heard he was going to purchaſe the ſaid eſtate; and therefore thought proper to inform him that the title thereto was not good; upon which he appeared diſpleaſed, and ſaid *poh, poh!* and went away.

This evidence was confirmed by *Samuel Pitt*.

Shipman, an auctioneer, depoſed, that he was applied to by *Palmer* in 1789, to ſell the eſtate; but from ſomething that appeared to him, upon reading the deeds, and alſo from the report that a good title could not be made, he declined being concerned.

Young depoſed, that immediately after the ſale, he was preſent at a public houſe, and read the leaſe to the parties preſent, and ſome doubts ariſing as to the title, *Palmer* promiſed to indemnify *Stainbridge*.

Anne Colton, mother of the plaintiff, depoſed, that *Edward Jolland* was in 1785 generally reputed owner, as heir in tail under the will of *Robert Long*. She has heard him ſay ſeveral times he was ſo entitled.

In 1785 *Edward Jolland* ſhewed *Hands* a copy of the ſaid will; and he was fully appriſed and acquainted with the nature and extent of the title; and, in the ſame year, *Hands* told *Jolland* that he had been with Mr. *Huſſey*, or *Hough*, to *Doctors Commons*, and had ſeen the ſaid will and was well ſatisfied with the title.

This

preſſing doubts, to diſtract the mind with uncertainty and confuſion; inſomuch that the doctrine which

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This deponent then gave the ſame account as *M'Neale* and *Pitt* of her converſation with *Stainbridge*, when he was paſſing by the houſe, and ſaid that, the day after the ſale, ſhe went to his houſe, and in the preſence of *Oliphant*, told him that a good title could not be made to the ſaid eſtate, and added that, as her huſband was dead, ſuch eſtate had come to her child; and therefore ſhe requeſted that he would not have any thing to do with the ſame: he ſaid he would do as he thought proper.

Oliphant depoſed, that to the beſt of his recollection and belief, no converſation paſſed between him and *Stainbridge*, or between *Stainbridge* and any other perſon, in his preſence, concerning the eſtate in queſtion.

Mr. Piggott for the plaintiff.—*Hands*, and all who claim under him, were bound to look to the title of the leſſor; and can have no better title than he could give them. The validity and duration of the leaſe muſt depend upon his power to grant it; and they who took it were bound to inform themſelves of the extent of his power. Every purchaſer is bound to look to the title of his vendor; and cannot plead ignorance of that which, had he looked, he would have known. The fact of the vendor's poſſeſſion cannot juſtify the vendee in treating with him as tenant in fee-ſimple, without requiring title deeds, abſtracts, or any other evidence of his title. Either the purchaſers have not looked to the title of the vendor, and have not fulfilled the obligation to inform themſelves, but have purchaſed in the dark, and at their peril, or they cannot be ignorant of the plaintiff's title. They do not allege any attempt to inform themſelves, and that the information they ſought was withheld; nor do they offer any excuſe. No papers to evidence the title were required. Had the purchaſer inquired about the title, the vendor muſt either have forged a title, or have ſhewn

which denies the regiſter to be conſtructive notice, ſo as to affect the holder of the legal eſtate, (for the

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ſhewn the will, which would neceſſarily have diſcovered the plaintiff's title. If a grantee or deviſee in tail, by avoiding to regiſter the deed or will creating the entail, and finding a purchaſer, who will take a conveyance in fee from him, and regiſter it, without looking farther or aſking a ſingle queſtion about his right to make ſuch conveyance, can diveſt the unborn iſſue of their title *per formam doni*, the conſequences of ſuch a tranſaction and ſo new a mode of conducting a purchaſe are very extraordinary and important. A tenant for life, in poſſeſſion, with remainders to *feme coverts*, infants, or perſons not *in eſſe*, may, upon the ſame principles, and by the ſame means, effect the ſame purpoſe. Can that be the true conſtruction of the *ſtatute?* According to this doctrine, the tenant in tail, or tenant for life in poſſeſſion, has an intereſt in omitting to regiſter, and by ſuch omiſſion the former can effect all he could effect by fine and recovery, and the latter, which he cannot effect by any other means. I agree if two perſons derive under the ſame perſon, the laſt deed without notice of the firſt, and regiſtered, ſhall prevail againſt the firſt in date not regiſtered. Here the iſſue in tail claim, not under the vendor, but by a title paramount under the ſame inſtrument which gives him title. If the defendant meant to protect himſelf under *Loveday* and *Palmer*, he ought to have alleged that he did ſo, and that they had no notice. He has not done that; and the plaintiff has made ground enough for an inquiry whether they are not men of ſtraw, truſtees for *Hands*; and that the defendant was dealing with them knowing that, and that the ſale was for the benefit of *Hands* and his family. The aſſignment from *Hands* to *Loveday* purports, upon the face of it, to be three years before the regiſtration, and to be an abſolute aſſignment of *Hands*'s intereſt. The aſſignment to

the caſes, if I properly underſtand them do not go further,) has been interpreted by many into a denial

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Palmer was upon the 18th of January 1790; and upon the 27th *Stainbridge* purchaſed. Both aſſignments were regiſtered together, ſubſequent to the purchaſe, and for the purpoſe of bolſtering up the title *Stainbridge* had then acquired. He cannot put himſelf into a different ſituation by any act done ſubſequent to his purchaſe, with notice; viz. by getting in the prior aſſignments, and regiſtering thoſe; which he could not do with his own deed. This is not like *Hine* v. *Dodd*, 2 Atk. 275. one witneſs fully contradicted by the anſwer; upon which ground alone the bill was diſmiſſed. *Le Neve* v. *Le Neve*, 1 Vez. 64. 3 Atk. 664. Amb. 436. was upon the evidence of a ſingle witneſs, *Norton* the agent. If this evidence will not do, no evidence will: and there is an end of the equity. It is under the head of fraud that equity relieves. *Sheldon* v. *Cox*, Amb. 624. is upon the ſame principle. Parol evidence was admitted in all the caſes.

Mr. Lloyd and Mr. Short for the defendant.—It is unfortunate that the Court has departed from the *ſtatute*, by admitting evidence of notice *aliunde*.

It has in fact repealed the *ſtatute*. But the Court will not now extend that, or hold ſuch looſe and deſultory evidence as this ſufficient. If *Hands* was a purchaſer without notice, *Stainbridge* may ſhelter himſelf under that, though he had notice. *Harriſon* v. *Forth*, Pr. Ch. 51. 1 Eq. Ca. Ab. 331. *Lowther* v. *Carleton*, For. 187. 2 Atk. 242. No notice is proved againſt *Hands*, except by one witneſs, contradicted by the anſwer. In the great caſe of *Le Neve* v. *Le Neve*, there was no doubt as to the notice, but the queſtion was, whether *Norton* was agent or not? and Lord *Hardwicke* conſiders all theſe caſes as depending, not ſo much on notice as fraud; as where the agent buys the eſtate himſelf, and regiſters his own

denial of its being notice, under any circumſtances whatever.

I am

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own deed, having his employer's deed in his pocket upon a truſt to regiſter it. In all the caſes there is ſomething of recital in the inſtrument, ſomething beyond parol evidence, ſomething more than what Lord *Hardwicke* calls ſuſpicion of notice.

July 31ſt. *Maſter of the Rolls.*—In this cauſe the value of the property is not ſuch as to make an iſſue deſirable; and if I am to decide it, I am of opinion the bill muſt be diſmiſſed; for it does not appear to me, that the plaintiff has made out a caſe to entitle her to the relief prayed. There are a great many ſuſpicious circumſtances in this caſe. One thing is clear; the parties who ſold to *Stainbridge*, if they ſold on their own account, have ſold in violation of the truſt repoſed in them. Nothing is more clear, than that *Loveday* and *Palmer*, the two perſons ſuppoſed to purchaſe under *Hands*, were mere truſtees for his family; therefore, with regard to them, I think the objection of Mr. Piggott to their being interpoſed as any bar to their relief, is well founded. Their regiſtry was with a view to this tranſaction; therefore I deſire to be underſtood to lay the conveyances to them totally out of the caſe. Then, laying out of the caſe the two intermediate conveyances, the queſtion is, How far there was notice, ſuch as this court holds ſufficient againſt a purchaſer for valuable conſideration, either to *Hands* or to *Stainbridge* himſelf? It is very clear that *Hands*, who was convicted of receiving ſtolen goods, and was tranſported, aſſigned this over in conſequence of his ſituation. The witneſs Mrs. *Hands* comes in a very extraordinary way to ſet aſide a conveyance, as ſhe ſays, made in truſt for her. The firſt queſtion is, Whether there is evidence ſufficient that *Hands* was perfectly aware the leſſor had only a limited intereſt? The principal witneſs is *Hands*'s wife. It is very extraordinary that ſhe ſhould come, who paid

rent

I am not aware that arguments have, at any time ſince the paſſing of the 4th and 5th William and

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rent for theſe premiſes under her huſband; and admits that he having laid out this money, aſſigned firſt to *Loveday*, but as truſtee for her; and then they were aſſigned to *Palmer*, as a ſecurity for a very trifling ſum of money, only 17l. 17s.; and ſhe ſtates broadly, that her huſband's conveyance to them was only in truſt for her; and ſhe ſtates broadly knowledge in her huſband of the defect of title; and the way ſhe makes it out is, that ſhe ſays *Hands* went to *Doctors Commons*, and there ſaw the will, and was perfectly ſatisfied with the title. It is almoſt inconceivable; for if *Jolland* was tenant in tail, it was the eaſieſt thing that could be, for him to make a good title. It is almoſt incredible that *Hands* ſhould take a leaſe for 61 years, and lay out money, and ſee that *Jolland* had a very good title, if he choſe to make it ſo. Two other witneſſes ſay *Hands* had looked at the will under which *Jolland* claimed theſe premiſes: but none of them go to the will of *Long*, which was made in 1731; and which created this entail; and I muſt ſuppoſe that, if *Hands* did go to *Doctors Commons*, and ſaw any will, it was another will. It is impoſſible not to ſee that Mrs. *Hands* gives this evidence from ſpite. Whatever the rule may be as to the regiſtration of deeds, it is impoſſible to let ſuch evidence as this be brought to prove notice upon a purchaſer for valuable conſideration. I muſt admit now that the regiſtry is not concluſive evidence; but it is equally clear that it muſt be ſatisfactorily proved that the perſon who regiſters the ſubſequent deed muſt have known exactly the ſituation of the perſons having the prior deed; and, knowing that, regiſtered, in order to defraud them of that title he knew at the time was in them. I am to ſuppoſe, upon this looſe evidence, that *Hands* went to *Doctors Commons*, ſaw that it was an entailed eſtate, upon which the man could make him

and Mary, c. 20., and 6th and 7th William and Mary, c. 14., been urged againſt the general neceſſity

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a good title, and that he choſe to commit this fraud upon the iſſue in tail, without getting a recovery ſuffered, and a good title thereby made to him.

Therefore there is no ſufficient evidence of any knowledge in *Hands* of any defect of his leſſor's title.

If notice was proved againſt *Hands*, I will not ſay there is not ſufficient ground for an iſſue, at leaſt as to the notice upon *Stainbridge*. I do not like his manner of ſwearing himſelf a purchaſer for valuable conſideration, without notice. It is clear, whether he had notice of the plaintiff's title or not, he had ſome intimation of the claim of the plaintiff. He ought to have declared that in his anſwer. His ſheltering himſelf under thoſe general words makes me imagine he thought it ſufficient not to have notice at the time of the auction. I agree it is not ſufficient to prove notice to aſſert that ſome other perſon claims a title; yet all the evidence given here is of that ſort. The plaintiff's mother was guilty of great neglect in merely telling the defendant he would purchaſe at his peril. She never attended the auction, and never regiſtered this will, of which ſhe ſays *Stainbridge* had notice. That would have been a much better way. Then the perſon purchaſing would have had notice, not only of the claim, but what ſort of claim it was. I very much doubt whether that general claim is ſufficient to affect a purchaſer, with notice of a deed, of which he does not appear to have had knowledge. If the premiſes would bear it, I ſhould be inclined to grant an iſſue; but, as it ſtands, I am of opinion the bill muſt be diſmiſſed; but without coſts. The plaintiff is an infant; and may not be bound by the decree. *Stainbridge* has not made a very honeſt defence. The grounds upon which I diſmiſs the bill are, firſt, that there is not ſufficient proof of notice to *Hands*, nor ſecondly, to *Stainbridge*.

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ceſſity of ſearching for judgments in the courts of record; and I conceive the ſubſtance of the ſeveral regiſtering acts, and the acts to enforce the doggetting of judgments perfectly analogous in their inſtitution and uſe, and that they ſupply preciſely the ſame reaſons for adopting this cautionary ſtep.

To prove, at leaſt, that the ſame concluſion may be drawn from one as from the other, I ſhall again treſpaſs upon the text of Meſſrs. Hargrave and Butler, who ſay, "the protection afforded by "terms of years againſt what are called meſne "incumbrances, makes it ſafe, in ſome caſes, to "diſpenſe with *a ſearch for judgments:* but this "is never prudent where there is reaſon to ap-"prehend notice of them will be proved, or will "be attempted to be proved on the party, or any "of his agents in the buſineſs.—Beſides no term, "or other outſtanding eſtate ſhould be relied on, "unleſs proof can be obtained eaſily, and at a "ſmall expence, of the inſtruments and acts in "law which muſt be proved to eſtabliſh the crea-"tion and deduction of the term. It ſhould alſo "be aſcertained that its ſituation is ſuch as enables "the

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If the parties wiſh to have it tried, I would not diſcourage an application: but I am afraid it is a hopeleſs caſe.

I regret that the ſtatute *has been broken in upon by parol evidence, and am very glad to find Lord* Hardwicke *in* Hine *and* Dodd *ſays, that nothing ſhort of actual fraud will do.*

" the party entitled to it to avail himſelf of it in " ejectment. This does not always appear ſuf- " ficiently attended to. Generally ſpeaking, it " is true the poſſeſſion of the ceſtuy que truſt is " the poſſeſſion of the truſtee: but it is equally " true that the extent and application of this rule " are by no means ſettled. Great care, therefore, " ſhould be taken in theſe caſes, where the out- " ſtanding eſtate is relied on, as a protection " againſt meſne incumbrances, that the poſſeſſion " of the actual terre-tenants has not been ſuch as " to deprive the perſons in whom the outſtand- " ing eſtate or intereſt is veſted of their entry." Having proceeded to borrow the expreſſions of the judicious authors thus far, I am tempted to proceed to the end of the paragraph; where it is obſerved that " in all caſes of this deſcription, " it is infinitely better to err by an exceſs of care, " than to truſt any thing to hazard."

In the inſtance of accepting what are called building leaſes, to which a part of the laſt caſe applies, neglects to ſearch the regiſter have been more conducive to the danger of individuals, than thoſe of any other deſcription; and it appears to me a moſt abſurd diſtinction actuating the public mind, which recommends this cautionary meaſure, when money is paid on the moment, as the conſideration of grant, and yet to forego it, when an equal ſum is to be, in future, expended on improvements of the property taken. This however happens daily. Indeed perfect ſecurity can hardly,

hardly, in any inſtance, be attained when this eaſy and ſalutary means of eſcaping error is not purſued.—A multiplication of original deeds, in which no manner of difference is made either by execution or indorſement; obtaining duplicates of leaſes from leſſors, under pretence of the original one being loſt or deſtroyed, when it has, in fact, been incumbered and delivered to a mortgagee, and other circumſtances of a ſurreptitious nature, will ſometimes defeat all calculations of ſecurity founded upon any other baſis.

With a knowledge of the reports thus detailed, and a trifling attention to the abſtract of the ſtatute given in the ſecond part of this volume, no perſon of even moderate caution can poſſibly incur, in a regiſter county, the dangers incident to every other: and, where title deeds cannot be transferred with the ſale or incumbrance of an eſtate, which frequently happens, I am aſſured the advantages of regiſtration muſt be too obvious to require comment.

But as erroneous opinions generally ariſe from want of either aſſiduity or leiſure to collate the acts of parliament, and the equitable deciſions thereon, the principal object of this addreſs is to ſupply an introduction and arrangement of the latter, and facilitate fair inveſtigation. Having, as I conceive, effected that purpoſe, I ſhall diſmiſs the ſubject, with merely obſerving, in concluſion, that the caſes of Bedford v. Backhouſe, and

Wrightſon v. Hudſon, although but recently determined when Lord Hardwicke made his decree on Hine and Dodd, and Le Neve and Le Neve, are not even alluded to in either; nay, indeed, it is almoſt certain they were not known on the hearing of Hine v. Dodd, as Lord Hardwicke obſerves thereon, that *two* caſes had been previouſly determined on regiſtry, alluding to Lord *Forbes* v. *Nelſon*, and *Blades* v. *Blades*, which are ſet out pretty much at large in the arguments on Le Neve v. Le Neve.

This has ſomewhat excited my ſurpriſe, but I have been willing to think that Lord Hardwicke did not chooſe to accept them as perfect authorities. It ſeems, however, much more unaccountable that Lord *Camden*, in *Morecock* v. *Dickins*, ſhould ſuffer both the deciſions of Lord *Hardwicke* to paſs unobſerved; and particularly the pointed aſſertion of the latter, in *Hine* and *Dodd*, on the effectiveneſs of the regiſter as notice.

I ſhall now proceed upon another objection urged againſt the principle of regiſtry, derived from an opinion that the intelligence, or notice, preſcribed by the ſtatutes to be divulged in a memorial, is not merely ſpecious and illuſive, but fraught with conſiderable danger to purchaſers and mortgagees. The information enjoined by the legiſlature to be recorded in every ſuch memorial, referring to any deed, conveyance, or will, is, "the day of the month, and the year when ſuch

" deed, conveyance, or will bears date, and the " names and additions of all the parties to ſuch " deed, or conveyance, and of the deviſor, or " teſtatrix of ſuch will, and of all the witneſſes to " ſuch deed, conveyance, or will, and the places of " their abode; and the honors, manors, lands, " tenements, and hereditaments contained in ſuch " deed, conveyance, or will; and the names of all " the pariſhes, townſhips, hamlets, precincts, or " extraparochial places within the ſaid county " where any ſuch honors, manors, lands, tene- " ments, or hereditaments are lying or being, " that are given, granted, conveyed, deviſed, or " any ways affected or charged by any ſuch deed, " conveyance, or will, in ſuch manner as the ſame " are expreſſed or mentioned in ſuch deed, con- " veyance, or will, or to the ſame effect."

Hence it is obſervable no actual neceſſity ariſes to deſcribe *the nature of the deed, its conſideration, or uſes*; and I am ready to confeſs that, in many inſtances, very conſiderable trouble might be avoided, if a more certain and complete intelligence had been enforced by the legiſlature; but it remains to be proved that any *dangerous* conſequences can reſult from the omiſſion, where even the moſt ordinary caution is practiſed.

Sir Matthew Hale, in a pamphlet publiſhed a few years before the earlieſt of the regiſtering acts took place, (1694,) and intitled "*A Treatiſe ſhew-* " *ing how uſeful, ſafe, reaſonable, and beneficial*

" *the inrolling and regiſtering of all Conveyances* " *of Land may be to the Inhabitants of this King-* " *dom,*" after ſtating reaſons for the meaſure, much to the ſame effect as thoſe contained in the preambles to the ſtatutes, enumerates the parts of deeds neceſſary, in his judgment, to be diſcloſed to the public eye, in the words following: " There " muſt be enrolled, at leaſt, ſo much of the deed, " or evidence, that concerns, firſt, *parties,* grantor " and grantee; ſecondly, *the things granted*; " thirdly, *the eſtate granted*; fourthly, *all thoſe* " *parts of the deed, or evidence, that have any in-* " *fluence upon the eſtate, as rent reſerved, condi-* " *tions, powers of revocation, of alteration, of* " *leaſing, the truſts, &c. and thoſe other things* " *which have an influence upon the eſtate:* and " without all this done and truly done, the pur- " chaſer, or lender, is as much in the dark as be- " fore, and cheated under the credit of a public " office to prevent it." This ſtricture, no doubt, challenges conſideration and reſpect, as uttered by a very great authority; and, *at the preſent day,* more cenſure originates from a peruſal of ſuch reflections, than from practical obſervation: for although the ſtatutes are mandatory only as to certain deſcriptions of things, without which no memorial can be accepted for regiſtry, yet as many further deſcriptions may be, and generally are introduced, as even the text of Sir Matthew Hale would recommend, (except in the regiſtry of deeds involving family concerns, and ſettlements on marriage,)

riage,) upon the following plain and unequivocal principle. The purchaſer or mortgagee of an eſtate is conſtantly in the habit of employing his own ſolicitor to inveſtigate the title of the vendor, or mortgagor, and prepare all neceſſary documents, amongſt which is the memorial; therefore it remains optional with him, and with him only, whether to expreſs the nature of the deed, its conſideration, conditions, &c. or not: nothing is left to the delicacy of the party diſpoſing of his intereſt. Now I can manifeſt to my readers that, amongſt the tranſactions recorded in the Middleſex office, upon an average, not more than one memorial in every hundred is compoſed of thoſe facts, *only*, which by the ſtatutes muſt of neceſſity be introduced to procure regiſtration. Hardly a purchaſe is entered on the books without the memorial ſo expreſſing it, though frequently the conſideration, or ſum paid, (which I do not apprehend to be material,) is omitted; and mortgages are very rarely regiſtered where the true deſcription of the nature of the deed and its value are not introduced. Motives of fairneſs and candour actuate this conduct in the majority of perſons regiſtering deeds, who are habituated to the moſt liberal part of the profeſſion, conveyancing: and as it is evident to the reſt that a material degree of odium and ſuſpicion attaches upon every tranſaction recorded in the preciſe and contracted terms which the law impoſes, and beyond which the jealouſy of individuals to publiſh their neceſſities would

would not perhaps admit compulſion, yet the practice of all deſcriptions of perſons, at the preſent period, (with the moſt minute exception,) is far different from what a mere commentator on the act of parliament, or one who has not the opportunity of real obſervation on its effects, may conceive. I conclude Sir William Blackſtone's remark to have been principally derived from a peruſal of this tract of Lord Chief Juſtice Hale, and an acquaintance with the caſes before referred to; for if any circumſtances of a ſerious nature had ſtruck his attention, they would undoubtedly have received a reprobation more pointed and direct. I have extracted from the journals of the Lords and Commons, a narrative of the proceedings on the introduction of the Middleſex act (*b*), and

(*b*) This act originated in the Houſe of Lords, as appears by the following ſtatement:

Die Sabbati, 5° Martii 1708.

Upon reading the petition of the juſtices of the peace and grand jury of the county of Middleſex, aſſembled at the general ſeſſions of the peace, held for the ſaid county at Hicks's Hall, in St. John Street, on the 28th day of February 1708, praying leave to bring in a bill for the public regiſtering of all deeds, conveyances, wills, and other incumbrances that ſhall be made of, or may affect, any manors, lands, tenements, or hereditaments within the ſaid county of Middleſex, after the day of 17c9, whereby purchaſers may be encouraged to lay out their money to their better ſatisfaction, and more certain ſecurity: it is ordered by the Lords Spiritual and Temporal, in parliament aſſembled, that the judges do forthwith prepare

and drawn ſuch concluſions therefrom as will, I truſt, appear founded in reaſon, and at the ſame time

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prepare and bring in a bill according to the prayer of the ſaid petition.

Die Sabbati, 12° Martii 1708.

The judges, purſuant to order, delivered a bill concerning the regiſtering of deeds and wills in the county of Middleſex: Which bill was proceeded upon on the 14, 17, 19, 24, 28, 29, and 30 March; 2, 4, and 5, April, on the latter of which days it paſſed the Houſe of Lords; and on Tueſday the 5th April 1709, a meſſage was ſent from the Lords to the Commons by Mr. *Hiccocks* and Mr. *Meller*, in the terms following: Mr. Speaker, the Lords have paſſed a bill intituled *An Act for the public regiſtering of Deeds, Conveyances, and Wills, and other Incumbrances, which ſhall be made of, or that may affect any Honors, Manors, Lands, Tenements, or Hereditaments, within the County of Middleſex, after the 29th Day of September* 1709; to which the Lords deſire the concurrence of the Houſe.

Friday, 8th April. Ordered that the engroſſed bill from the Lords, intituled as above, be read the firſt time to morrow, at twelve o'clock.

Saturday, 9th April. An engroſſed bill from the Lords, intituled as above, was, according to order, read the *firſt* time.

Reſolved that the bill be read a ſecond time.

Ordered that the bill be read a ſecond time upon Wedneſday morning next, in a *full* houſe.

Ordered that the bill be printed.

Wedneſday, 13th April. Ordered that the engroſſed bill from the Lords, intituled as above, be read a ſecond time to morrow, at twelve o'clock.

Thurſday, 14th April. An engroſſed bill from the Lords, intituled as above, was, according to order, read a *ſecond* time.

Reſolved

time operate a diminution of the cenſure ſuſtained by the Legiſlature, from apprehenſion that the ſyſtem

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Reſolved that the bill be committed to Mr. *Barker*, Mr. *Auſten*, Mr. *Neville*, Mr. *Churchill*, Sir *John Bennett*, Sir *John Hawles*, Colonel *Stanley*, Mr. *Page*, Sir *Francis Maſham*, Sir *Roger Hill*, Mr. *Plumptree*, Mr. *Hillerſden*, Sir *William Strickland*, Mr. *Cecill*, Sir *Thomas Webſter*, Mr. *Vernon*, Sir *William Daines*, Mr. *Hutchinſon*, Mr. *Monckton*, Sir *William Huſſler*, Mr. *Bridges*, Lord *William Powlett*, Mr. Serjeant *Girdler*, Mr. *Cox*, Mr. *Guidott*, Mr. *Cholmley*, Mr. *Heyſham*, Mr. *Richmond*, Mr. *Duncomb*, Mr. *Poultney*, Mr. *Clavell*, Mr. *Peyton*, Mr. *Solicitor General*, Sir *William Whitlocke*, Sir *Robert Marſhall*, Sir *Thomas Travell*, Mr. *Hampden*, Mr. *Anneſley*, Mr. *Onſlow*, Sir *William Withers*, Mr. *Strickland*, Mr. *Webb*, Mr. *Skippon*, Mr. *Wynn*, Mr. *Chace*, Mr. *Woollaſton*, and all that ſerve for North Britain, London, Surry, Berks, and Bucks.—To meet this afternoon, at five o'clock, in the Speaker's chamber.

Friday, 15th April. Sir *William Huſſler* reported from the committee that they had gone through the bill, and made ſome amendments thereunto, which they had directed him to report when the houſe was pleaſed to receive the ſame.

Ordered that the report be received to-morrow morning.

A petition of *Baſill Hern*, *John Suffield*, *John Highlord*, *Nathaniel Barnardiſton*, *William Lamb*, *William Brydges*, *John Dawling*, *Daniel Bland*, and *Edward Bulſtrode*, on behalf of themſelves, and the reſt of the incorporated clerks of inrolment in the High Court of Chancery, was preſented to the Houſe, and read; ſetting forth that Queen Elizabeth did, by letters patent, dated at Weſtminſter the 18th of November, in the 16th year of her reign, incorporate the ſix clerks, and the three clerks of the petty bag of the High Court of Chancery, and their ſucceſſors, clerks of inrolment in the ſaid Court for ever: That in the bill from the Lords now depending in this Houſe,

ſyſtem of regiſtry is productive of danger, rather than utility. Two very material facts are evidenced by

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Houſe, for public regiſtering of deeds, conveyances, and wills, and other incumbrances that may affect any honors, manors, lands, tenements, or hereditaments, within the county of Middleſex, after the 29th day of September 1709, there is a clauſe whereby the ſworn clerk to execute the office of inrolment in Chancery for *Middleſex* is made one of the regiſters of the ſaid intended regiſtry; by means whereof the petitioners do apprehend that their deputy will be made in his own right, to the utter excluſion of the petitioners from any benefit in the ſaid office; and praying to be heard by counſel at the bar of the Houſe, what they have to object againſt the ſaid clauſe.

And a motion being made, and the queſtion being put, that the petitioners be heard, according to the prayer of the petition; the Houſe divided—For the queſtion 76, againſt the queſtion 57. So it was reſolved in the affirmative.—And the Houſe being informed that the committee to whom the ſaid bill was committed had met, and gone through the bill, and directed the ſame to be reported to the Houſe,

Ordered that the report be received to-morrow morning; and that the petitioners be then heard by their counſel, if they think fit.

A petition of *Richard Owen*, clerk of the eſſoins in the Court of Common Pleas, at Weſtminſter, was preſented to the Houſe, and read; ſetting forth that by an act 4° & 5° *Willielmi & Mariæ*, for the better diſcovery of judgments in the Courts of Queen's Bench, Common Pleas, and Exchequer, at Weſtminſter, it is enacted that the petitioner, in the ſaid Court of Common Pleas, and the reſpective officers therein mentioned, in the other courts, ſhall, under the penalty of one hundred pounds, keep an alphabetical docket, or regiſter of all judgments recovered in the ſaid Courts, to be ſearched by

by this narrative; firſt, That the judges, who prepared the bill, and the committee of the Houſe of Commons

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all perſons, paying for each term 4d., and no more. That the bill now depending for regiſtering all deeds, &c. directs that all ſuch judgments ſhall be regiſtered in another office to be created for that, and no other purpoſes. That the docket kept by the petitioner and the other officers, is altogether as effectual for the ſecurity of purchaſers, as this new office can be; and ſo not only increaſe the charge, by requiring an entry in two offices, but take away the only recompence the petitioner has for his labor in keeping the ſaid regiſter for thirty years paſt: and praying to be heard by counſel againſt that part of the bill which relates to the regiſtering of judgments.

Ordered that the petitioner be heard by his counſel (if he think fit) at the bar of the Houſe, to-morrow morning.

A petition of *Luke Phillips*, gentleman, one of the two ſworn clerks to execute the office of the inrolment in the High Court of Chancery, was preſented to the Houſe, and read, ſetting forth that by a particular clauſe in a bill *(ſtating the title)* the petitioner apprehends he will be much injured, in regard the whole regiſtering is thereby fixed in the other clerk, ſolely; and praying to be heard by counſel, touching the ſaid clauſe.

Ordered that the petitioner be heard by his counſel at the bar of this Houſe (if he think fit) to-morrow morning.

Ordered that the petitioners be heard only by one counſel upon each petition.

Saturday, 16th April. Mr. *Barker*, according to order, reported from the committee, to whom the engroſſed bill from the Lords *(ſtating the title)* was committed, that the committee had made one amendment to the bill, which they had directed him to report to the Houſe: and he read the ſame in his place; and afterwards delivered the bill in at the clerk's table.

And

Commons appointed to inveſtigate its contents, and which was in a great degree conſtituted of the moſt

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And the counſel attending for the ſeveral petitioners, in relation to the bill, were called in; and the ſeveral petitions were read, and the counſel were heard thereupon: and alſo the counſel for Mr. Jones, one of the clerks of the inrolment office in Chancery. And the counſel being withdrawn, the amendment made by the committee was read, and is as follows: Pr. 1. L. 2. after "hereditaments" inſert "ſuch."

The ſaid amendment, being read a ſecond time, was upon the queſtion put thereupon, agreed unto by the Houſe.

Another amendment was propoſed to be made to the bill, Pr. 2. L. 20. to . . . . out the word "ſworn" in order to bring in other amendments, on behalf of the nine inrolment clerks.

And the queſtion being put that the word "ſworn" ſtand part of the bill, it was reſolved in the affirmative.

Another amendment was propoſed to be made to the bill, to leave out the word "clerk" in order to make it "clerks," that the other inrolment clerk might be concerned alſo.

And the queſtion being put that the word "clerk" ſtand part of the bill, the Houſe divided—For the queſtion 49, againſt the queſtion 33. So it was reſolved in the affirmative.

Another amendment was propoſed to be made to the bill, Pr. 7. L. 11., to leave out the firſt "the" and after the ſecond "the" to inſert "concealment or ſuppreſſion, or". And the ſame was upon the queſtion put thereupon agreed unto by the Houſe.

Another amendment was propoſed to be made to the bill Pr: * L: * after * to inſert "Four-pence whereof out of each "entry of every memorial of the judgments in the Common "Pleas to be paid and accounted for to the clerk of the eſſoins "of the ſaid court by the regiſter or maſter." And the queſ-

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moſt conſummate lawyers of the age, could not be ignorant of the arguments uſed by Sir Matthew Hale;

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tion being put that the Houſe do agree to the ſaid amendment, it paſſed in the negative.

Ordered that the bill be read the third time upon Monday next at twelve o'clock.

Monday, 18th April. Ordered that the bill be read the third time to-morrow morning.

Tueſday, 19th April. An engroſſed bill from the Lords, intituled *An Act*, &c. was, according to order, read the third time.

An engroſſed clauſe was offered, as a rider, to be added to the bill, that "*in caſe of concealment of any will, or deviſe, any purchaſer ſhall not be diſturbed, or defeated, unleſs the ſame be actually regiſtered within five years after the death of the deviſor or teſtatrix.*" And the ſame was twice read with a blank, which was filled up, and then the clauſe was read the third time; and, upon the queſtion put thereupon, agreed unto by the Houſe to be made part of the bill. Another clauſe was offered, as a rider, to be added to the bill; that "*there being two ſworn clerks, and but one named to be regiſter for the office intended to be erected; that after the charges incident to the execution of the ſaid office ſhall be borne, the clear profits ariſing by regiſtering memorials ſhall be divided between them.*" And the queſtion being put that the clauſe be brought up, the Houſe divided—For the queſtion 34, againſt the queſtion 52. So it paſſed in the negative.

Another engroſſed clauſe was offered, as a rider, to be added to the bill, that "*no member of parliament ſhall be capable of being regiſter, or any regiſter be capable of being choſen a member to ſerve in parliament.*" And the ſame was read three times, and, upon the queſtion being put thereupon, agreed unto by the Houſe to be made part of the bill.

Reſolved that the bill, with the amendments, do paſs.

Ordered

Hale: and ſecondly, that only one amendment was offered by ſuch committee, viz. the addition of a ſolitary monoſyllable. The effects of the ſtatutes for regiſtry in the Weſt and Eaſt Ridings of the county of York were then eaſily to be aſcertained, and if any imperfection or deficiency, in point of form or extent, had appeared in thoſe, it is extremely probable that they would have been obviated in the one then propoſed.

The emendations and additions effected by the Commons, after the bill paſſed the committee, are very few and inſignificant; and not in the leaſt tending to enforce greater notoriety of tranſactions on record than when it was firſt communicated from the Upper Houſe.

That the utility of a more copious diſcloſure upon the regiſter books than the bill directed, was not evident to the legiſlature, I by no means attempt to inſinuate: on the contrary, I incline to think the committee muſt have been conſcious that the directions of the bill did not extend, in this reſpect,

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Ordered that Mr. Barker do carry the bill to the Lords, and acquaint them that this Houſe hath agreed to the ſame, with ſome amendments; to which amendments they deſire their Lordſhips' concurrence.

Wedneſday, 20th April. A meſſage from the lords by Sir *Robert Legard* and Mr. *Gery*.

Mr. Speaker.—The Lords have agreed to the amendments made by this Houſe, to the bill intituled *An Act for the public regiſtering of Deeds*, &c.

ſpect, ſo far as they ſucceſsfully might. But the penetrating man will readily conceive certain difficulties the propoſers might have to combat, in attempting to proceed beyond the limits complained of: the principal of which would be the ſtrenuous oppoſition of the landed intereſt to the paſſing any compulſory law, embracing a greater extent than thoſe now in exiſtence. Expence and a ſhare of inconveniency, however minute, are evidently produced by the eſtabliſhment of regiſters; and mankind in general, claiming a right to appreciate their own care and diſcrimination, are too apt to conceive themſelves fully competent to avoid error, without the aſſiſtance of any extrinſic aid. Theſe conſiderations, and a diſinclination to expoſe pecuniary difficulties, are ever likely to excite ſtrong diſcountenance in the majority of landholders to an extenſion of the regiſtering laws, even upon the principle of thoſe now ſubſiſting; which indeed has been inſtanced in the rejection of many applications to parliament, to create regiſters in different counties, ſince the 8th of Geo. II. the ſtatute for the North Riding of Yorkſhire, and the laſt enacted.

As the legiſlatures, therefore, before whom the ſtatutes in queſtion were paſſed, knew the impoſſibility of repelling the objections ariſing from any neceſſity to publiſh individual embarraſſments, (which would have been effected by an enforcement of more full explanation reſpecting the deſcription and

and conſideration of every deed, a memorial whereof was to be regiſtered,) they may be ſuppoſed to have conceded their primary intention, to quiet the public mind. Material repugnance would, I conceive, be felt by parties executing marriage ſettlements, if an open avowal of the uſes and appropriations was rendered indiſpenſable: and what ſenſations would a parent, on the moment of executing a deed of gift, or appointment to one child, in preference to another, experience, under the neceſſity of communicating, through the medium of a public office, the full extent of the tranſaction to every inquiſitive eye?

I cannot, having theſe circumſtances in view, wholly approve the ſuggeſtions of Sir Matthew Hale before ſtated, although I admit the inference, in concluſion, to be ſuch as an enlightened and liberal mind, not having practical experience to aſſiſt its inveſtigations, would naturally adopt.

Admitting, for argument's ſake, that the preciſe terms dictated by the regiſtering acts, and none other, were allowed to be introduced in memorials, (which, as I have before obſerved, is by no means the practice,) it might, even then, be ſucceſsfully contended, that although inconvenience was ſuſtained from the omiſſion of a more direct and ingenuous communication of facts, yet, under the exerciſe of prudential meaſures, danger could not be incurred. For example, I will ſuppoſe an intended purchaſer or mortgagee, not having re-

liance entirely on the aſſertion of the landholder and propoſed grantor, applies to the regiſtry to be informed whether any previous incumbrance or charge has been created on the property he is about to take, and he diſcovers a deed from the landholder to another perſon, duly regiſtered, the deſcription of which is not definable by the memorial, becauſe it contains no farther intelligence than the acts of parliament enforce. I then propoſe to aſk whether it is not reaſonable to apprehend that the purchaſer or mortgagee will immediately interrogate the landholder on the ſubject of this undefined incumbrance? Moſt certainly he will; and ſatisfaction may generally be obtained from an inquiry no further extended: I do not mean from the mere aſſertion of the incumbrancer, but either from a counterpart or duplicate of the deed regiſtered, or from the corroborative information of the party in whoſe favor the inſtrument in queſtion is made. If, by the intelligence derived from theſe ſources, all circumſtances are not ſatisfactorily developed, a purchaſer or mortgagee muſt be mad to purſue his negotiation. The regiſtry, *in its moſt limited extent*, undoubtedly ſupplies a beacon to warn againſt fraud, and guide even the ordinarily cautious to ſecurity: but under the *more extended communications which the prevailing practice of preparing memorials affords*, (a deviation from which conſtantly excites ſuſpicion,) it will be almoſt needleſs for me to obſerve, addreſſing myſelf, as I do, to thoſe who

have, at one time or other, experienced its beneficial effects, that both ſatisfaction and direct information are acquired. The declared purpoſe of the regiſtering ſtatutes is the prevention of fraud by ſecret conveyances; no deduction is to be made from any part of their text, that the minutiæ of titles are to be explained, or that a purchaſer or mortgagee may acquire perfect information by their ſubſtantive aſſiſtance. I mention this only becauſe I am ſenſible many perſons conceive the regiſtry to be a conſervatory of intelligence whence titles may be effectually framed or depreciated! Thus having ſtated the reaſons probably influencing the legiſlature, in paſſing theſe acts, not to preſs for further publicity of tranſactions within the counties to which they refer; and having not only ſhewn the preſent practice of entering memorials, but, as I think, evinced the impoſſibility of *danger* being incurred by an oppoſite conduct, (though *inconvenience* and *ſuſpicion* frequently may,) I ſhall diſmiſs my ſubject with one more obſervation; namely, that general opinions are ſeldom more correct than when they involve a conſideration of pecuniary advantage and ſecurity: and when a compariſon is attempted to be made between the ſalutary and dangerous tendency of the regiſtering ſtatutes, ſome attention may be due to the ſtatement of an inconteſtible fact, viz. that purchaſers will pay larger ſums, and mortgagees frequently advance money at one per cent. lower rate of intereſt, on

property in the regiſtering counties than in others: whence it ſeems obvious, that practical and poſitive advantages accrue to the community by their operation.

The ſucceeding ſheets will be occupied by an attempt to correct miſconceptions on more immaterial points than thoſe before mentioned, and to give a few plain directions for the ready attainment of ſuch benefits as ſeem to have been propoſed by the legiſlature. In this attempt are alſo implicated certain precedents or forms for preparing memorials; which are rendered equally uſeful for the ridings of the county of York, as for the county of Middleſex.

CHAP. II.

Abſtract of the Act of Parliament for regiſtering Deeds, and other Conveyances of Lands and Tenements in the County of Middleſex; *with Notes of Obſervation thereon.*

THE ſtatute of the 7th of Queen Ann. ch. 20. for the public regiſtering of deeds, conveyances, and wills, and other incumbrances reſpecting any honors, manors, lands, tenements, or hereditaments within the county of Middleſex, after the 29th day of September 1709, recites, that, by the different and ſecret ways of conveying lands, tenements, and hereditaments, ſuch as were ill-diſpoſed had it in their power to commit frauds (*a*), and frequently did

(*a*) The firſt regiſtering act paſſed in this kingdom was 2, 3 Ann. ch. 4. for the Weſt Riding of the county of York; which differs in no eſſential points from the Middleſex act, except that it has no direction on the ſubject of regiſtering judgments, ſtatutes, and recognizances, or of diſcharging mortgages by certificate. Theſe omiſſions appear to have been ſhortly after noticed, as by the 5th Ann. ch. 18. it is enacted, that no judgments, &c. ſhall bind lands in the ſaid Weſt Riding until the ſame are regiſtered; and by this latter act power is given to diſcharge ſuch judgments, &c. and mortgages, by certificate, in much the ſame way as in the Middleſex one; only with this peculiarity that the defendants, in judgments, cognizors,

did ſo, by means whereof ſeveral perſons who, through many years induſtry in their trades and employments, and by great frugality, had been enabled to purchaſe lands, or to lend money on land ſecurity, were undone in their purchaſes and mortgages by prior and ſecret conveyances and fraudulent incumbrances; and, not only themſelves, but their families thereby utterly ruined. And it enacts, that to remedy the ſame, a memorial of all deeds and

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nizors, in recognizances, and mortgagors, in mortgages, are required to ſubſcribe the certificates of diſcharge, as well as the plaintiffs, cognizees, and mortgagees; which certainly muſt be conceived ſuperfluous. In this laſt act, and in the regiſter acts for the Eaſt and North Ridings of York, 10 Ann. c. 18., and 8 Geo. II. c. 6. ſect. 22., a power is alſo granted to inrol bargains and ſales with the ſeveral regiſters of the three Ridings, and the ſame are ordered to have as full effect as thoſe inrolled in the courts of record at Weſtminſter: an authority which the Middleſex act does not create.

Although the framers of this ſtatute might deem it impoſſible for any doubts or queſtions to ariſe upon the preamble and firſt enacting clauſe, yet it is certain that controverſies for priority amongſt purchaſers and mortgagees have been argued, and deciſions of a contradictory tenor have been obtained, upon a point which the written law ſeems to have peremptorily ſettled, viz. that the *poſitive regiſtering* of an antecedent incumbrance is indiſpenſably requiſite before the title of a ſubſequent purchaſer or mortgagee for valuable conſideration can be defeated or even interrupted! Some hints on what has been termed the *equity of notice*, in contradiſtinction to the abſolute law on the ſubject, are ſubmitted in the prefatory part of this volume, with caſes analogous to the queſtion.

and conveyances which, from and after the 29th day of September in the year of our Lord 1709, ſhall be made and executed, and of all wills and deviſes in writing made or to be made and publiſhed, where the deviſor or teſtatrix ſhall die after the ſaid 29th day of September, of or concerning and whereby any honors, manors, lands, tenements, or herditaments in the ſaid county may be any ways affected in law or equity, may be regiſtered as thereinafter directed: and that every ſuch deed or conveyance that ſhall, at any time after the ſaid 29th day of September, be made and executed, ſhall be adjudged fraudulent and void againſt any ſubſequent purchaſer or mortgagee for valuable conſideration, unleſs ſuch memorial thereof be regiſtered, as by this act is directed, before the regiſtering of the memorial of the deed or conveyance under which ſuch ſubſequent purchaſer or mortgagee ſhall claim: and that every ſuch deviſe by will ſhall be adjudged fraudulent and void againſt any ſubſequent purchaſer or mortgagee for valuable conſideration, unleſs a memorial of ſuch will be regiſtered at ſuch times and in ſuch manner as is in the ſaid act directed. And it enacts, that all and every memorials ſo to be regiſtered ſhall be put into writing upon vellum or parchment, and brought to the office appointed for regiſtering; and, in caſe of deeds and conveyances, ſhall be under the hand and ſeal of ſome or one of the grantors, or ſome or one of the grantees, his or their heirs, executors,

executors, or adminiſtrators, guardians or truſtees, atteſted by two witneſſes, one whereof to be one of the witneſſes to the execution of ſuch deed or conveyance (*b*); which witneſs ſhall, upon his oath, before

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(*b*) If a memorial is executed by any party to a deed, reſident in town, whether it be *grantor* or *grantee*, (for it will be wholly immaterial which,) and it proves convenient to the witneſs to attend at the regiſtering office, the oath of ſuch execution is adminiſtered *verbally*, in the following terms: "You ſwear that you ſaw this memorial ſigned and ſealed, "and the deed to which it refers duly executed by the party "(or parties) thereto whoſe execution you have atteſted:" and it is not neceſſary, in ſuch caſe, to affix an affidavit ſtamp, nor any other, to the parchment on which ſuch memorial is written. But if the memorial is neceſſarily executed by all parties in the country, and *there* ſworn, the affidavit muſt be engroſſed on the proper ſtamp, and may be either written under, or annexed to the memorial.—Its form will be as in Appendix, Precedent No. 42. and muſt be on parchment. It being often found more convenient to obtain the regiſtry of an inſtrument by *a repreſentative of a deceaſed party* under ſome one of the above deſignations, viz. of *heir*, *executor*, *adminiſtrator*, *guardian*, or *truſtee*, than by any of the *ſurvivors*, who, if they are grantors, will perhaps heſitate to perform what juſtice and equity demand; and as the above direction does not convey a very diſtinct idea of the manner in which the regiſtry by ſuch repreſentative is to be effected, it may be uſeful to premiſe, that the inſtrument to be regiſtered, notwithſtanding it is already ſufficiently executed for general legal purpoſes, muſt, in addition, be ſealed and delivered by the perſon requiring the regiſtry, as if he was a party in his own right; and ſuch perſon muſt alſo ſign and ſeal a memorial, which will be varied from the uſual form, where it refers to witneſſes, as in Appendix, Precedent No. 31.

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before one of the regiſters or maſters appointed by the ſaid act, or before a maſter in Chancery, ordinary or extraordinary, prove the ſigning and ſealing of ſuch memorial, and the execution of the deed or conveyance mentioned in ſuch memorial; and in caſe of wills, the memorial ſhall be under the hand and ſeal of ſome or one of the deviſees, his or their heirs, executors, or adminiſtrators, guardians or truſtees, atteſted by two witneſſes, one whereof ſhall, upon his oath, before the ſaid regiſters

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An atteſtation in this caſe is to be written under, or indorſed on the inſtrument in the following terms: "Sealed and de-"livered by C. D. one of the executors (or otherwiſe) of the "within-named A. B. (for the purpoſe of regiſtering) in the "preſence of ——." Sometimes trouble is occaſioned by a very prevalent opinion that, where ſome of the parties to a deed reſide out of town, it is neceſſary the proof on oath, preparatory to regiſtry, ſhould extend to the execution by *all* the grantors.—Now, if ſuch deed appears properly executed and atteſted, the proof of its execution, and that of the memorial by any one of the parties, (conſonant to the form of oath contained in the beginning of this note,) will render any affidavit from the country uſeleſs. Neither is it material that the witneſs ſhould ſee the *ſame* party execute the deed who ſigns and ſeals the memorial:—for inſtance, if the deed be made from A. to B., and the witneſs atteſts the execution of the deed by the former, his ſeeing the memorial executed by B. will ſuffice. It will be requiſite, however, in ſuch memorial to ſtate the other atteſtation or atteſtations, if more than one, to the deed, with deſcriptions to *all* the witneſſes; a caution on which head is given in a ſucceeding note. For the manner in which *ſeveral* atteſtations are to be mentioned in a memorial, ſee Appendix, Precedent No. 15.

regiſters or maſters, or before ſuch maſter in Chancery as aforeſaid, prove the ſigning and ſealing of ſuch memorial; which reſpective oaths the ſaid regiſters or maſters, and maſters in Chancery, are empowered to adminiſter, and ſhall indorſe a certificate thereof on every ſuch memorial, and ſign the ſame.

And it enacts, that every memorial of any deed, conveyance, or will, ſhall contain the day of the month and the year when ſuch deed, conveyance, or will bears date, and the names and additions of all the parties (*c*) to ſuch deed or conveyance, and of the deviſor or teſtatrix of ſuch will, and of all the witneſſes to ſuch deed, conveyance, or will, and the places of their abode (*d*), and ſhall expreſs or mention

(*c*) Not merely the additions of reſidence and occupations, but all ſuch further deſcriptions as the parties have in the deed; ſuch as heirs at law, truſtees, executors, &c.

(*d*) In all caſes it is neceſſary for a ſolicitor to require the places of abode, and occupations of witneſſes to be affixed againſt their names in atteſtations, but more eſſentially when deeds are to be executed in the country, as all ſuch witneſſes muſt be particularized in the memorial.—Very many inconveniences reſult from a want of this caution: and often, where inſtruments have been neglected to be regiſtered for any material length of time, it has been found impoſſible to ſupply deſcriptions accurately. As *ſome* muſt poſitively be given, every care ſhould be uſed to render them genuine; for, if the validity of a deed ſhould be diſputed, it would be, at leaſt, a diſagreeable circumſtance to have it proved that ſuch witneſſes

mention the honors, manors, lands, tenements, and hereditaments contained in ſuch deed, conveyance, or will, and the names of all the pariſhes, townſhips, hamlets, precincts, or extra-parochial places within the ſaid county, where any ſuch honors, manors, lands, tenements, or hereditaments are lying or being, that are given, granted, conveyed, deviſed, or any ways affected or charged by any ſuch deed, conveyance, or will, in ſuch manner as the ſame are expreſſed or mentioned in ſuch deed, conveyance, or will, or to the ſame effect (*e*); and that every ſuch deed, conveyance, and

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neſſes did not reſide where they were deſcribed in the memorial. If a conſiderable time has elapſed from the date of a deed intended to be regiſtered, and all the witneſſes are dead, or the teſtimony of any of them not eaſily obtained, no further delay need originate from either cauſe; *as the re-execution of ſuch deed by any one of the parties, in the preſence of a new witneſs*, will be ſufficient to effectuate the regiſtry.—In this caſe an atteſtation muſt be written on the deed as follows: "Re-ſealed and re-delivered by the within-named A. B., for "the purpoſe of regiſtering, in the preſence of ——." But it muſt be remembered that all the previous atteſtations to the deed are neceſſary to be noticed in the memorial.

(*e*) Theſe latter words frequently lead to error in the preparing of memorials, by reaſon of their obtaining too extended a conſtruction. General expreſſions may be avoided, ſuch as *ways, paths, paſſages*, &c. and any other that do not elucidate the locality or dimenſions of premiſes: but, in all inſtances, abuttals and boundings (unleſs where a deſcription in ſome memorial

and will, or probate of the ſame, of which ſuch memorial is ſo to be regiſtered as aforeſaid, ſhall be produced to the regiſters or maſters at the time of entering ſuch memorials, who ſhall endorſe a certificate on every ſuch deed, conveyance, and will, or probate thereof, and therein mention the certain day, hour, and time on which ſuch memorial is ſo entered or regiſtered, expreſſing alſo in what book, page, and number the ſame is entered; and that the ſaid regiſters or maſters ſhall ſign the ſaid certificate when ſo indorſed; which certificates ſhall be taken and allowed as evidence of ſuch reſpective regiſteries in all courts of record whatſoever; and that every page of ſuch regiſter books, and every memorial that ſhall be entered therein, ſhall be numbered, and the day of the month, and the year, and hour or time of the day when every memorial is regiſtered ſhall be entered in the margents of the ſaid regiſter books, and in the margents of the ſaid memorial: and that every ſuch regiſter or maſter ſhall keep an alphabetical calendar of all pariſhes (*f*), extra-parochial

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memorial previouſly regiſtered is referred to) muſt be ſtrictly and literally inſerted: and where deſcriptions of premiſes are contained in or aſſiſted by ſchedules or plans, ſuch muſt be introduced and delineated in the memorials.

(*f*) Great uncertainties and miſchiefs were likely to be produced from the preſervation of theſe parochial calendars, in

parochial places and townſhips within the ſaid county, with reference to the number of every memorial that concerns the honors, manors, lands, tenements, or hereditaments in every ſuch pariſh, extra-parochial place, or townſhip reſpectively, and of the names of the parties mentioned in ſuch memorials: and that ſuch regiſters or maſters ſhall duly file every ſuch memorial in order of time as the ſame ſhall be brought to the ſaid office, and enter or regiſter the ſaid memorials in the ſame order that they ſhall reſpectively come to their hands.

And

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in conſequence of the creation, from time to time, of new pariſhes within the county, the incorporation of ſuch with thoſe of ancient ſtanding, and the forming of other boundaries and diviſions. As frequently as theſe alterations occurred, it was a long while before the correct limits of each pariſh could be aſcertained, and even the ſlighteſt temporary uncertainty was ſufficient to deſtroy the intention of the ſtatute in this direction: from neceſſity therefore, after a perſeverance of ſeven years, ſuch calendars were diſcontinued; but what could be done to ſupply this unavoidable deviation from the letter of the act, was effected by the ſubſtitution of another, in which the parochial one is combined.

This has been hitherto preſerved and found effectual. It contains an alphabetical arrangement of *grantors'* and *vendors'* ſurnames in the firſt margin, in the ſecond are thoſe of the *grantees* and *purchaſers*, and in the laſt margin is exhibited the *pariſh* in which the premiſes incumbered are ſituate, or if that is doubtful, or ſuch premiſes are extra-parochial, then the name of the ſtreet or place, as it is deſcribed in the deed regiſtered.

And it enacts, that where there are more writings than one for making and perfecting any conveyance or ſecurity, which do name, mention, or any ways affect or concern the ſame honors, manors, lands, tenements, and hereditaments, it ſhall be a ſufficient memorial and regiſter thereof if all the ſaid honors, manors, lands, tenements, and hereditaments, and the pariſhes, townſhips, hamlets, or extra-parochial places wherein the ſame lie, be only once named or mentioned in the memorial or regiſter of any one of the deeds or writings made for the perfecting of ſuch conveyance or ſecurity, and that the dates of the reſt of the ſaid deeds or writings relating to the ſaid conveyance or ſecurity, with the names and additions of the parties and witneſſes, and the places of their abodes, be only ſet down in the memorials and regiſters of the ſame, with a reference to the deed or writing whereof the memorial is ſo regiſtered that contains or expreſſes the parcels mentioned in all the ſaid deeds, and directions how to find the regiſtering the ſame (*g*).

And

(*g*) If a ſingle conveyance or ſecurity compriſes ſeveral deeds, as leaſe for a year, releaſe, bargain and ſale, and aſſignment of term, it is not neceſſary to ſet out the parcels in any but the firſt memorial; and much trouble may be avoided by referring fromt he ſubſequent ones, as in Appendix, Precedents Nos. 27 and 28. This obſervation alſo holds where ſeveral deeds, ſuch as

And it enacts, that all memorials of wills that ſhall be regiſtered within the ſpace of ſix months after

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as a leaſe and aſſignments, or other transfers of the ſame leaſe, have, by neglect or want of information, been withheld from regiſtry, and are brought *collectively* for that purpoſe.—See Appendix, Precedent, Nos. 5, 6, and 10.

Perſons ſometimes conceive, where former deeds in a title have not been regiſtered, that the *recital* of ſuch in the memorial of any new transfer or ſecurity will fully accompliſh the purpoſe of defence againſt fraud: than which nothing can be more fallacious; for although ſuch recital may be uſeful, under particular circumſtances, to elucidate, and compreſs every deſcription of documents affecting the property into one point of view, yet the regiſtering of an *ulterior* deed cannot poſſibly operate as notice of *prior* ones.

To render this aſſertion fully convincing, a beneficial leaſe may be ſuppoſed granted from *A.* to *B.*; that *B.* aſſigns ſuch leaſe to *C.*; and, in concluſion, *C.* diſpoſes of his title to *D.*, a memorial of which laſt deed alone is regiſtered, reciting the leaſe and previous aſſignment. *A.* the leſſor and proprietor of the freehold, taking advantage of theſe omiſſions, propoſes to ſell a complete *unincumbered* eſtate in fee to *E.*, whoſe ſolicitor reſorts to the alphabetical liſts of grantors' names kept in the regiſtering office, to diſcover whether the property offered for ſale is as *A.* deſcribes it. Having deduced a regular title down to *A.*, all inveſtigation from the time of that aſſumption will be confined to *his* name, until diſcovery is made of any act committed by him to incumber. Now no ſuch act can preſent itſelf under the circumſtances ſtated: and therefore *E.* and his ſolicitor would accept *A.*'s title, with a confidence of its being clear of charge; and thereby, in all probability, defeat *D.*'s incumbrance.

after the death of every reſpective deviſor or teſtatrix dying within the kingdom of Great Britain, or within the ſpace of three years after the death of every reſpective deviſor or teſtatrix dying upon the ſea or in any parts beyond the ſeas, ſhall be as valid and effectual againſt ſubſequent purchaſers, as if the ſame had been regiſtered immediately after the death of ſuch reſpective deviſor or teſtatrix: and that in caſe the deviſee, or perſon or perſons intereſted in the honors, manors, lands, tenements, or hereditaments deviſed by any ſuch will as aforeſaid, by reaſon of the concealment or ſuppreſſion, or conteſting ſuch will, or other inevitable difficulty, without his, her, or their wilful neglect

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There is a caſe in Strange, *Honeycome*, ex dem. *Halpen et ux*, verſus *Waldron et al.* immediately applicable to this point.

Regiſtering an aſſignment is not regiſtering the leaſe.

In Middleſex.—The defendant claimed under a leaſe made in 1730, by Lord Grandiſon, which was ſoon after mortgaged, and in 1731 ſold out and out to the defendant. The original leaſe was not regiſtered, but the firſt mortgage of it and the defendant's purchaſe were: and it not being a leaſe at a rack-rent the queſtion was, Whether this was a regiſtry within the meaning of 7 Ann. c. 20.? And the Chief Juſtice held it *not to be ſufficient*; for the act ſays, the deed under which the party claims with the witneſſes names ſhall be regiſtered; and of this a ſubſequent purchaſer can have no notice by the bare regiſtry of the aſſignment. *And it is alſo required that the original be produced to the officer.*

neglect and default, ſhall be diſabled to exhibit a memorial for the regiſtry thereof within the reſpective times before limited, and that a memorial ſhall be entered in the ſaid office of ſuch conteſt or other impediment within the ſpace of two years after the death of ſuch deviſor or teſtatrix who ſhall die within the kingdom of Great Britain, or within the ſpace of four years next after the deceaſe of ſuch perſon who ſhall die upon the ſea or beyond the ſeas (*b*); then and in ſuch caſe the regiſtry of the memorial of ſuch will within the ſpace of ſix months next after his, her, or their attainment of ſuch will, or a probate thereof, or removal of the impediment whereby he, ſhe, or they are diſabled or hindered to exhibit ſuch memorial, ſhall be a ſufficient regiſtry within the meaning of the act (*i*).

And

(*b*) Any decree or order from the courts of equity, or rule of the courts of law, may be regiſtered, as is ſeen by Appendix, Precedent, Nos. 21, 22, and 24.

(*i*) Omiſſions in the regiſtration of wills frequently occur, and indeed few, comparatively with the aggregate number, are brought to be regiſtered until deviſees are diſpoſed to ſell or incumber the property obtained under them. Theſe omiſſions ariſe, in general, from the ignorance of the party intereſted, as to the propriety of the meaſure. When deeds are prepared by a ſolicitor, he is converſant in the neceſſity of having them regiſtered, and invariably ſuggeſts that neceſſity to his client: but perhaps, in the compaſs of ſeveral years after

And it enacts, that in caſe of the concealment or ſuppreſſion of any will or deviſe, any purchaſer or purchaſers ſhall not be diſturbed or defeated in his or their purchaſe, unleſs the will be actually regiſtered within five years after the death of the deviſor or teſtatrix.

And in caſe of mortgages, whereof memorials ſhall be entered in the regiſter's office, purſuant to the ſaid act, if at any time afterwards a certificate ſhall be brought to the ſaid regiſters or maſters, ſigned by the mortgagee or mortgagees in ſuch

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the death of a teſtator, a will and probate paſs only through the hands of a deviſee and his proctor; the latter of whom, although he may be acquainted with the expediency of regiſtering, does not probably think it a duty incumbent upon him to recommend any proceeding beyond the limits of his own office.

As many inſtances happen where general deviſes compriſe eſtates of conſequence, it is ſometimes expedient for gentlemen in the profeſſion to inquire of what they are compoſed; which would alſo prevent many dangerous omiſſions in this reſpect. Wills and probates, and copies of wills officially authenticated, which have not been regiſtered within the periods directed by the ſtatute, are received at the office, and it is preſumed would operate againſt perſons purchaſing ſubſequent to the regiſtry, notwithſtanding the non-exiſtence of any decree or order to warrant the delay.

The caſe Blades v. Blades, cited in Le Neve v. Le Neve, page 27 of the prefatory part of this volume, and that of Stainbridge v. Jolland in the 40th page, will afford the beſt argument in recommendation of a ſtrict adherence to the law on this ſubject.

ſuch mortgage (*k*), his, her, or their executors, adminiſtrators, or aſſigns, and atteſted by two witneſſes, whereby it ſhall appear that all monies due upon ſuch mortgage have been paid or ſatisfied in diſcharge thereof, which witneſſes ſhall, upon their oaths before the ſaid regiſters or maſters, or before a maſter in Chancery, ordinary or extraordinary, prove ſuch monies to be ſatisfied or paid accordingly, and that they ſaw ſuch certificate ſigned by the ſaid mortgagee or mortgagees, his, her, or their executors, adminiſtrators, or aſſigns (*l*); that then and in every ſuch caſe the ſaid

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(*k*) By the regiſtering acts for York the mortgagor is likewiſe directed to ſign the certificate of diſcharge.

(*l*) Many objections have originated upon this method of diſcharging mortgages; and conveyancers of eminence have refuſed to accept titles under them, when the limitation or time preſcribed in ſuch mortgages for the payment of the principal ſum borrowed has elapſed, urging that although the deed in its primitive ſtate might be merely conditional, and liable to be redeemed in law under the proviſions therein expreſſed, yet that the condition for paying the principal money *on a day certain* not having been complied with, and the eſtate having by ſuch lapſe become redeemable only by the interference of a court of equity, (all legal claim being veſted in the mortgagee,) that nothing but a deed of a reconveyance, under the hand and ſeal of the mortgagee, or his repreſentatives, can ſo ſufficiently invalidate the former ſecurity as to give a marketable title to the mortgagor. Perſons who purchaſe, and their ſolicitors, will have in view the poſſibility of being incumbered with a ſuit growing out of any circumſtance of the title;

ſaid regiſters or maſters ſhall make an entry in the margents of the ſaid regiſter books againſt the regiſtry

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and it is worthy conſideration, where a property is taken which has been under mortgage, whether a note in the form of a certificate *without ſtamp or ſeal*, is ſufficient, after the limitation, or time aſſigned for redemption is run out, to reinſtate ſuch property firmly and legally in the mortgagor: becauſe the event of its not ſo doing would probably, at a future day, involve a purchaſer in an equity conteſt with the repreſentatives of the mortgagee, to obtain a more perfect diſcharge. The clauſe in the act of parliament reſpecting the entry of certificates contains merely a direction to the regiſters: it cannot be conſtrued to alter the former law relative to deeds, and might have been intended to attach only on ſuch mortgagees as were *duly* diſcharged.

I am aware of the caſe, *Farmer*, ex dem. *Earl*, v. *Rogers et al.* Trin. 1755, C. B. mentioned by Sir *Francis Buller* in his treatiſe on Niſi Prius, in the following terms:

" The defendant produced a mortgage for years, by deed " from the plaintiff's anceſtor, upon which was an indorſement " in hæc verba, *Received of Mrs.* M. O. 500*l* *in the within-* " *recited mortgage, and all intereſt due to this day*; *and I do hereby* " *releaſe to the ſaid* M. O. *and diſcharge the mortgaged premiſes* " *from the ſaid term of* 500 *years.*"

" On a caſe reſerved, the court held, 1ſt, *That theſe words* " *amounted to a ſurrender of the term*; 2dly, *That ſuch ſurrender* " *might be by note in writing, by the* ſtatute of frauds; 3dly, " *That a note in writing was not required to be ſtamped.*" Now, taking it for granted that an inſtrument like that of a certificate has been correctly conceived, long ſince the period of the determination referred to, to be a ſufficient diſcharge or ſurrender of even a forfeited mortgage; yet, at the preſent day, another obvious objection occurs to theſe inſtruments, from the act

giſtry of the memorial of ſuch mortgage, that ſuch mortgage was ſatisfied and diſcharged according to ſuch certificate, to which the ſame entry ſhall refer, and ſhall after file ſuch certificate, to remain upon record in the ſaid regiſter office.

And it enacts, that the regiſtry ſhall not extend to any copyhold eſtates (*m*) or to any leaſes at a rack-

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act of the 23d of his preſent majeſty, and other ſubſequent ſtatutes impoſing ſtamp duties: for, as the editor of the laſt edition of the *Statutes at large* obſerves, "it may be worthy of "attention, whether the memorandum, or note in writing, re-"quired by the 4th ſection of the ſtatute of frauds, ought not "be *ſtamped*, under the directions of ſuch act." It is, therefore, certainly adviſeable to indorſe a reconveyance on the deed of mortgage, and have it regiſtered, in preference to any other mode of diſcharge: the expence will be enhanced in a trifling degree, it is true; but the precaution, it ought to be remembered, may prevent conſiderable trouble and delay at a future period.

For forms of certificates to diſcharge mortgages and judgments (the latter of which, by a regulation ſubſequent to the paſſing of the regiſter act, are admitted, although no proviſion is therein made on the ſubject) ſee Appendix, Precedent Nos. 36 and 40.

(*m*) This exception of copyhold eſtates it is reaſonable to ſuppoſe originated from a deſire to ſave the expence of regiſtration to perſons poſſeſſing this ſpecies of property, under an idea that all tranſactions relative thereto had ſufficient notoriety from their being entered upon the books or rolls of the manor court from whence the title to ſuch property was derived. There are, however, deeds of copyholds not uſually entered with the ſteward of the manor, and the exiſtence of which could not be traced from his information.—Such are deeds of cove-

rack-rent (*n*), or to any leaſe not exceeding twenty-one years, where the actual poſſeſſion and occupation go along with the leaſe (*o*), or to any of the chambers in Serjeants' Inn (*p*,) the inns of court, or Chancery.

And

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nant for ſurrenders, leaſes, and aſſignments of terms created under leaſes. In ſome inſtances, perhaps, leaſes are entered, but, in general, only the licence from the lord to his tenant to grant a leaſe, which may or may not take effect.

The very general terms of this exception of copyhold eſtates will, no doubt, induce a careful ſolicitor to regiſter *all* deeds reſpecting this ſpecies of property not uſually recorded by the ſteward of the manor.

(*n*) Where a mere rack-rent is reſerved on a leaſe, which, according to Wood, Inſt. 185. is "the full yearly value of the "land, &c. payable by the tenant for life or years," it is clearly exempted from the neceſſity of regiſtration; but if, at any period within the term, improvements are made by the enlargement of buildings, repairs, or in any other way, ſo that the premiſes demiſed are rendered of greater yearly value than when originally let, it remains to be conſidered whether, from the time of ſuch improvements, the leaſe under which the ſame are held can be deemed a leaſe at rack-rent, and whether it ſhould not from thence be regiſtered.

(*o*) When ſuch a leaſe becomes aſſigned *for valuable conſideration*, its regiſtry ought always to be recommended; and particularly when ſuch aſſignment is by way of mortgage, for then it is clearly out of the exemption, the poſſeſſion and occupation (mentioned conjunctively) being divided.

(*p*) Serjeants' Inn having been always manifeſtly within the city of London, or its liberties, a preſumption has frequently obtained on the minds of profeſſional gentlemen that the legiſlature

And that no judgment, ſtatute, or recognizance, other than ſuch as ſhall be entered into the name and upon the proper account of her majeſty, her heirs and ſucceſſors, which ſhall be obtained or entered into after the ſaid 29th day of September 1709, ſhall affect or bind any honors, manors, lands, tenements, or hereditaments ſituate, lying, and being in the ſaid county of Middleſex, but only from the time that a memorial of ſuch judgment, ſtatute, or recognizance ſhall be entered at the ſaid regiſter office (*q*), expreſſing and containing, in caſe of

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lature intended the act of 7 Ann. c. 20. to include, in its operation, the whole metropolis except the borough of Southwark; and the conſequence has been the regiſtry of many titles to property within the city and its liberties. All theſe exemptions are very looſely expreſſed, and leave much to be doubted by cautious individuals.

(*q*) A very commendable attention to the conveniency of purchaſers and mortgagees is evinced in this direction, which concentrates every deſcription of incumbrances into one immediate point of obſervation, and prevents the trouble and great expence of applying to the courts of record in ſearch of judgments, under the directions of the 7th and 8th Will. 3. c. 36., and alſo to the books of entry of ſtatutes and recognizances. Thus has every purchaſer or mortgagee of property in the county of Middleſex an evident advantage over thoſe who buy, or take ſecurities in any other county (except York) by the more ready and conciſe method preſcribed by the regiſtering act of acquiring information relative to every incumbrance obtained againſt the propoſed vendor or incumbrancer.

The ſtatute for dogketing judgments, though virtually rendered uſeleſs in the regiſtering counties, ought to be regarded as

of ſuch judgment, the names of the plaintiffs, and the names, additions, and places of abode, if any ſuch

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as ſtill, in fact, exiſting. This caution ariſes from the obſervance of many judgments regiſtered, which have not been doggeted. The ſtatute enacts, "that no judgment not doggeted and entered in the books, (i. e. the books of the courts "at Weſtminſter,) ſhall affect any lands or tenements, as to "purchaſers or mortagees, or have any preference againſt "heirs, executors, or adminiſtrators in their adminiſtration of "their anceſtors', teſtators', or inteſtates' effects."

The derivation, uſe, and form of ſtatutes merchant and ſtaple, which are not ſo generally underſtood as other ſecurities on land, may be learned by a reference to the ſtatute 13ſt Edw. I. *de mercatoribus*; 27th Edw. III. ch. 9.; 2 Black. Com. 160.; Wood's Inſt. 141.; and 4th Inſt. 238.

Precedents of memorials of judgments, ſtatutes, and recognizances, with inſtructions by what officers they are to be authenticated, and where ſworn, are introduced in Appendix, Precedent Nos. 34, 35, 37, 43, and 44.

Uncertainty, even at the preſent day, ſeems to exiſt upon the queſtion, whether judgments operate to charge *terms of years or leaſehold property*, as the two following caſes, anſwered differently by gentlemen diſtinguiſhed by their experience and erudition, evince.

CASE I.

A. *againſt* K.

The plaintiff is an infant, and entitled to an annuity of fifty pounds, ſecured upon an eſtate at Enfield.

The *Lord* CHANCELLOR, by order, directed that the defendant ſhould be at liberty to lay propoſals before the maſter for ſecuring the payment of the annuity; and if the maſter approved thereof, then that the defendant K. ſhould give ſuch ſecurity: but in caſe the maſter ſhould not approve of ſuch ſecurity,

ſuch be in ſuch judgment, of the defendants; the ſums thereby recovered, and the time of the ſigning

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rity, he was to inquire whether it would be for the benefit of the infant to let or ſell the eſtate in queſtion in the cauſe.

The defendant K. has laid before the maſter a propoſal to demiſe a meſſuage or tenement in Middleſex, let upon a repairing leaſe for twenty-eight years or thereabouts at 63 l. per ann., upon which the tenant has laid out 400 l.; and which is ſubject to a ground-rent of only 6 l. per ann. or thereabouts. The houſe is mortgaged, but Mr. K. propoſes to pay off the mortgage immediately.

A judgment has been obtained by J. C. J. eſqr., againſt the defendant to the amount of many thouſand pounds; and it has been objected on the part of the plaintiff, the infant, that ſuch judgment is a lien upon the eſtate propoſed to be ſecured.

Your opinion is deſired on behalf of the maſter Mr. *Eames*, *whether the judgment is or is not a lien upon the eſtate?*

I incline to think that the judgment is a lien upon the eſtate. It would certainly be ſo if Mr. K.'s houſe was a freehold: but I ſuppoſe it is only a leaſehold for years; and if ſo I think it a doubtful point whether the judgment is a lien upon it; but I incline to think it is. Before the ſtat. of Weſt. 2. 13th Edw. I. ſt. 1. ch. 18. no ſubject could on a judgment have execution of the lands of the defendant againſt whom the judgment was obtained, except in ſome ſpecial caſes; 2 Inſt. 394.; but by that ſtatute, the plaintiff may elect to have a writ of execution of a moiety of the defendant's lands; and though the ſtatute mentions lands generally, yet it extends to land in which the defendant has a term for years; 2 Inſt. 396. l. 1. 2.; and it is at the option of the plaintiff either to have the term ſold, or to have it extended, 8 Co. 171. The form of the writ of execution founded on this ſtatute is a command to the ſheriff, "to cauſe "to be delivered to the plaintiff, at a reaſonable price or extent, "a moiety

ſigning thereof; and in caſe of ſtatutes and recognizances, expreſſing and containing the date of ſuch ſtatute

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" a moiety of the defendant's lands and tenements in his " bailiwick, whereof the defendant on ſuch a day (being the " day on which the judgment was given) was ſeiſed; to hold " the ſaid moiety to the ſaid plaintiff," &c. The word *ſeiſed* in the writ is not properly applicable to a leaſehold for years, but ſtill the authorities are that a leaſe for years may be extended on an elegit; and thoſe authorities have never been contradicted: conſequently this eſtate of Mr. K.'s, though he has only a leaſehold, may be extended purſuant to the command of a writ of elegit, if any ſhould iſſue on the judgment, notwithſtanding he ſhould alien it before the writ iſſued; becauſe the command of the writ is to extend a moiety of all the lands he had the day the judgment was given; and this form has continued ſince the ſtatute of frauds 29 Car. 2. c. 3. Yet the doubt I have ariſes on the 16th ſection of that act, by which it is enacted, " that no writ of execution ſhall bind the property " of the goods againſt whom ſuch writ of execution is ſued " forth, but from the time ſuch writ is delivered to the ſheriff, " under-ſheriff, or coroners to be executed." A term for years is a chattel real, and ſometimes comprehended under the term *goods*: and if it be ſo in that ſtatute, then a *bonâ fide* ſale before the writ of execution is delivered to the ſheriff would be good againſt the execution, and ſo was the opinion of the lord-keeper in the caſe of an extent upon a ſtatute, 1 Vern. 294., and of the court in 2 Vern. 390., and Chanc. Prec. 125. in the caſe of an extent at the ſuit of the crown, which in moſt caſes reaches further than the ſubject's execution —But theſe are not the ſame with an elegit on the ſtat. Weſtm. 2. and therefore not in point: for in the caſe of an execution by fi. fa. or any other execution only againſt goods, they before the ſtatute of frauds related to the award of execution,

2 Rol.

ſtatute or recognizance, the names, additions, and places of abode of the cognizors and cognizees therein,

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2 Rol. Abr. 157.; and ſince the ſtatute in the ſubject's caſe, only to the time the writ is delivered to the ſheriff to be executed: but the elegit relates to the judgment, as appears by many authorities, and the form of the writ: and, therefore, I incline to think that ſtatute has not altered the law with reſpect to an elegit, founded on the ſtatute Weſtm. 2; but that the ſame ſtill relates to the judgment if doggeted as required by ſtatutes later than any of the above.

G. HILL.

Linc. Inn, July 27, 1790.

CASE II.

A. B. demiſed to C. D. a certain meſſuage and premiſes, for a long term of years.

E. F. and G. H, truſtees of the eſtate of the ſaid C. D., then deceaſed, and E. D. his only ſon, and acting executor, in conſideration of 1000 guineas, aſſigned ſuch meſſuage and premiſes to I. K., the preſent poſſeſſor.

I. K. being deſirous to raiſe a ſum of money on this ſecurity, has made application for that purpoſe; but an objection is raiſed, after ſearching the regiſtry for Middleſex, (in which county the premiſes are,) under the preſumption that the *whole* eſtate of C. D. was incumbered previouſly to the date of I. K.'s purchaſe by a judgment for a very conſiderable ſum.

Your opinion therefore is requeſted, whether a judgment regiſtered antecedent to I. K.'s purchaſe can be conſtrued into a charge, as well upon the *leaſehold* as the *real* property of I. K., or whether only upon the latter.

By the 29th Car. II. c. 3. ſ. 18. it is enacted, "that no writ of "fieri facias, or other writ of execution, ſhall bind the property "of the goods of the perſon againſt whom ſuch writ of execution "ſhall be ſued, but from the time that ſuch writ ſhall be de-

"livered

therein, and for what ſums, and before whom the ſame were acknowledged; and that in order to the making an entry of ſuch memorials of judgments, ſtatutes, and recognizances as aforeſaid, the party and parties deſiring the ſame ſhall produce to and leave with the ſaid regiſters or maſters, to be filed in the ſaid public or regiſter office, a memorial of ſuch judgment, ſtatute, or recognizance, ſigned by the proper officer, or his deputy, who ſhall ſign ſuch judgment in the ſame office, or by the proper officer in whoſe office ſuch ſtatute or recognizance ſhall be inrolled, together with an affidavit, ſworn before one of the judges at Weſtminſter, or a maſter in Chancery, that ſuch memorial was duly ſigned by the officer whoſe name ſhall appear to be thereunto ſet; which memorial ſuch reſpective officer

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" livered to the ſheriff to be executed." In the preſent caſe, therefore, if the writ of execution was not delivered to the ſheriff before the aſſignment to I. K., the property was not ſubject to it; whether the writ was or was not delivered to the ſheriff may be known by ſearching at the ſheriff's office.

CHARLES BUTLER.

Linc. Inn, 12th April 1791.

Mr. Impey in his Common Pleas Practice, laſt edition, fo. 504. under the title *Elegit*, eſpouſes the opinion of Mr. Serjeant Hill, and refers to 8 Co. 171. Moor 32. Hob. 47. Cro. El. 656. 3 Co. 9. and to *his own Office of Sheriff*. The authority of *Shirley* v. *Watts*, 3 Atk. Rep. 200. ſays, a judgment creditor, before he is entitled to redeem a mortgage of a leaſehold eſtate and bond creditor, *muſt take out execution*.

officer is required to give ſuch plaintiff or plaintiffs, cognizee or cognizees, or his, her, or their executors or adminiſtrators, or attornies, or any of them, he, ſhe, or they paying for the ſame the ſum of one ſhilling; and that the ſaid regiſter or maſter ſhall make an entry, and likewiſe, if required, ſhall give a certificate in writing, under his hand, teſtified by two credible witneſſes, of every ſuch memorial of any judgment, ſtatute, or recognizance brought to him to be ſo regiſtered as aforeſaid, and therein mention the certain day on which ſuch memorial is regiſtered or entered, expreſſing alſo in what book, page, and number the ſame is entered. And it enacts, that for the better and more effectual putting in execution the matters and things by the ſaid act directed, the ſworn clerk to execute the office of inrolment in the High Court of Chancery, who is appointed to inrol for the county of Middleſex, the chief clerk to inrol pleas in the Queen's Bench (*r*), the clerk of the warrants in the Court of Common Pleas, and the queen's remembrancer, or his deputy, in the Court of Exchequer, ſhall be the regiſters or maſters of the office for the matters and things in the ſaid act contained; who ſhall and may from time to time

(*r*) By the 25th Geo. II. c. 4. the ſecondary of the Court of King's Bench, for the time being, is appointed regiſter in the room of the chief clerk.

time nominate and appoint one or more able and ſufficient perſon or perſons to be their deputy or deputies; and that the Lord High Chancellor or Lord Keeper, or Lords Commiſſioners of the Great Seal, the two Chief Juſtices and Chief Baron, or any three of them, ſhall from time to time have full power and authority to make ſuch rules and orders for the better management and government of the office of regiſters as they ſhall find convenient and neceſſary (*s*). And it enacts, that if any perſon or perſons ſhall at any time forge or counterfeit any entry of the acknowledgment of any ſuch memorial, certificate, or indorſement, and be thereof lawfully convicted, ſuch perſon or perſons ſhall incur and be liable to ſuch pains and penalties as in and by *an act paſſed in the fifth year of Queen Elizabeth*, intituled *An Act againſt Forgers of falſe Deeds and Writings*, are impoſed upon perſons for forging and publiſhing of falſe deeds, charters, or writings ſealed, court-rolls, or wills, whereby

(*s*) Very few rules or orders have been made in regulation of the Middleſex regiſtry:—the principal are an alteration in the hours of attendance, which are now conſolidated, and made ten till three, inſtead of nine till twelve in the forenoon, and two till five in the afternoon; which intermiſſion contributed greatly to the inconvenience of ſearching:—and an acceptance for regiſtry of office copies of wills and of certificates to diſcharge judgments; neither of which are rendered admiſſible by the act.

whereby the freehold or inheritance of any perſon or perſons of, in, or to any lands, tenements, or hereditaments ſhall or may be moleſted, troubled, or charged; and that if any perſon or perſons ſhall at any time forſwear himſelf before the ſaid regiſters or maſters, or before any judge or maſter in Chancery, in any of the caſes therein mentioned, and be thereof lawfully convicted, ſuch perſon or perſons ſhall incur and be liable to the ſame penalties as if the ſame oath had been made in any of the courts of record at Weſtminſter.

And it enacts, that no member of parliament ſhall be capable of being regiſter, or of executing by himſelf, or any other perſon or perſons, the ſaid office, or to have, take, or receive any fee or other profit whatſoever iſſuing out of the ſaid office, or for or in reſpect thereof; nor ſhall any ſuch regiſter or his deputy, or any perſon or perſons receiving profit out of the ſaid office, be at any time capable of being, or being choſen a member to ſerve in parliament.

APPENDIX.

PRECEDENT, No. 1.

Memorial of an Agreement for granting a Leaſe.

A MEMORIAL to be regiſtered of Articles of agreement, under ſeal, bearing date, &c. made between S. B. of, &c. Eſq. of the one part, and R. H. of, &c. of the other part: whereby the ſaid S. B. did covenant, promiſe, and agree with the ſaid R. H., his executors, adminiſtrators, and aſſigns, that when and ſo ſoon as the meſſuage or tenement thereinafter mentioned and agreed to be erected and built by the ſaid R. H., upon all that piece or parcel of ground ſituate in Eaſt-ſtreet, in the pariſh of Saint Mary-le-bone, in the county of Middleſex, ſhould be ſlated in, the vaults thereof completely turned, and the front area railing put up, upon the plan and dimenſions mentioned in the ſchedule thereunder written; and which ſaid piece or parcel of ground abutteth and adjoineth Eaſt, &c. (*here mention the deſcription of the premiſes at large, except general words,*) he the ſaid S. B. would immediately execute a good and ſufficient indenture of leaſe to the ſaid R. H.,

under the covenants in the now regiſtering agreement ſet forth, of ſuch the ſaid piece or parcel of ground, and all erections and buildings thereon erected or to be erected, for and during, and unto the full end and term of ninety-nine years from Michaelmas-day now laſt paſt; ſubject, for the firſt two years of the ſaid term, to the rent of one pepper-corn, and for the remainder of the ſaid term to the yearly rent of ſix pounds and ten ſhillings, free from all taxes and deductions whatſoever. Which ſaid articles of agreement were duly executed by the ſaid S. B. in the preſence of P. H. of, &c. Gentleman, and W. B. clerk to the ſaid P. H.; and by the ſaid R. H. in the preſence of E. F. and Z. H., both of, &c. Gentlemen; and the ſame are hereby required to be regiſtered by the ſaid R. H.; as witneſs his hand and ſeal.

R. H. (*L. S.*)

Signed and ſealed in the preſence of

E. F.

Z. H. *

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* In all caſes two witneſſes to a memorial are indiſpenſably requiſite.

PRECEDENT, No. 2.

Memorial of an Aſſignment of Building Articles, by Deed Poll indorſed thereon.

A MEMORIAL to be regiſtered of A deed poll, bearing date, &c. indorſed upon certain articles of agreement, bearing date, &c. made between S. B. of, &c. of the one part, and R. H. of, &c. of the other part: by which deed poll the ſaid R. H. did aſſign unto M. N. of, &c. his executors, adminiſtrators, and aſſigns, as well the therein within-written articles, as alſo all the piece or parcel of ground therein mentioned, and all his right and intereſt of, in, and to the ſame, and the meſſuage or tenement therein agreed to be, and which is now completely finiſhed thereon, together with all and ſingular the premiſes ſituate in the pariſh of Saint Mary-le-bone, therein covenanted to be demiſed, and which are particularly deſcribed in a memorial of the ſaid articles of agreement, regiſtered on the day of &c. in B. No. to hold the ſaid articles of agreement, and all the right and intereſt of the ſaid R. H. therein, unto the ſaid M. N., his executors, adminiſtrators, and aſſigns, for the term, and ſubject to the rent mentioned in the ſaid articles. Which ſaid deed poll, as to the execution thereof by the ſaid R. H., is witneſſed by C. D.

of, &c. Gentleman, and G. I. of the ſame place, his ſervant; and is hereby required to be regiſtered by the ſaid R. H.; as witneſs his hand and ſeal.

R. H. (*L. S.*)

Signed and ſealed in the preſence of

C. D.

G. I.

Precedent, No. 3.

Memorial of an Aſſignment of Building Articles, by ſeparate Deed.

A MEMORIAL to be regiſtered of

A deed poll of aſſignment, bearing date, &c. made from R. H. of, &c. to M. N. of, &c.: whereby, after reciting certain articles of agreement, dated &c. made between S. B. of the one part, and the ſaid R. H. of the other part, regiſtered on the day of in B. No. and further reciting that, ſince the date and execution of the ſaid articles of agreement, the ſaid R. H. had completely carried into effect the building of a certain meſſuage or tenement, in purſuance of the covenant entered into by him for that purpoſe; it is by the ſaid deed poll witneſſed, that in conſideration of three hundred pounds paid by the ſaid M. N. to the ſaid R. H., he the ſaid R. H. did aſſign unto the ſaid M. N., his executors, adminiſtrators,

niſtrators, and aſſigns, all his the ſaid R. H.'s right, title, and intereſt in and to the ſaid above-mentioned articles of agreement, and the piece or parcel of ground thereby agreed to be demiſed, and the ſaid meſſuage or tenement, and all and ſingular other the premiſes, with the appurtenances thereunto belonging or appertaining; to hold for all the eſtate, term, and intereſt therein of the ſaid R. H., ſubject to the payment of the ground rent, and performance of the covenants in the ſaid agreement reſerved and contained. The execution of which ſaid deed poll by the ſaid R. H. is witneſſed by C. D. of, &c. Gentleman, and R. I. of the ſame place, his ſervant; and the ſame is hereby required to be regiſtered by the ſaid M. N.; as witneſs his hand and ſeal.

M. N. (*L. S.*)

Signed and ſealed in the preſence of

C. D.

R. I.

Where building articles are aſſigned, it may be found ſalutary (beſides regiſtering the deed of aſſignment) to give notice of the tranſaction to the ground landlord, in order to prevent his being unwarily induced to grant a leaſe to the perſon with whom he entered into treaty; who being diſhoneſtly inclined, might take advantage of ſuch a ſtep, to commit fraud. On the other hand a reſpectable ground landlord ſhould al-

ways inſiſt upon having the original articles reſtored to him, or cancelled, at the moment he executes a leaſe, in compliance with their terms.

PRECEDENT, No. 4.

Memorial of an Agreement, contained in a Letter, and ſtampt within the Limitation preſcribed by Act of Parliament.

A MEMORIAL to be regiſtered of A memorandum of agreement, contained in a letter addreſſed to Meſſrs. C. H. and J. B. of, &c. bankers, and expreſſed in the words and figures following: "Gentlemen, 27th May 1797. In "conſideration of the ſeveral ſums advanced by "you on my account, and for which you demand "ſecurity, I ſend you a leaſe of my houſe in "Finſbury-ſquare; my beneficial intereſt wherein "I conceive more than adequate to the debt I "owe you.—This you are at liberty to retain: "and, if the mere depoſit is not ſatisfactory, I "will execute any legal deed to be prepared by "your ſolicitor, for your better ſecurity." Which memorandum of agreement is ſigned G. R., and addreſſed from Finſbury-ſquare; and the ſame is alſo ſigned by the ſaid C. H., one of the partners of the above firm, in the preſence of R. F. W. his

his clerk; and is by the ſaid C. H. hereby required to be regiſtered; as witneſs his hand and ſeal. C. H. (*L. S.*)

Signed and ſealed in the preſence of

R. F. W.

I. D.

If agreements are not very prolix, it is generally adviſable to ſet them out, as in the laſt precedent; many inſtances occurring where memorials are obliged to be rejected when brought for regiſtry, by reaſon that the perſons who prepare them attempt to give an arbitrary conſtruction to the inſtrument to be regiſtered; frequently omitting paſſages eſſential to its true deſcription. The component parts of a deed being well underſtood, ſuch neceſſity with reſpect to them does not often hold; but the contrary is the caſe in agreements, where, in the giving a fair and candid explanation of their contents, a context is moſt frequently unavoidable.

PRECEDENT, No. 5.

Memorial of a Leaſe.

A MEMORIAL to be regiſtered of

An indenture of leaſe, bearing date, &c. made between E. R. of, &c. of the one part, and H. C. of,

of, &c. of the other part: whereby the ſaid E. R. did demiſe to the ſaid H. C. all that piece or parcel of ground, &c. (*here ſet out the deſcription of premiſes, with their boundings and dimenſions, verbatim, from the deed, except the general words,*) to hold to the ſaid H. C., his executors, adminiſtrators, and aſſigns, from the day of laſt paſt, for ſixty-one years, at the rent of a pepper-corn for the firſt year and a half of the ſaid term, and at the rent of twenty pounds for the remainder thereof. The execution of which ſaid indenture of leaſe by the ſaid E. R. is witneſſed by I. R. of, &c. and I. B. his clerk; and the execution thereof by the ſaid H. C. (for the conveniency of having the ſame indenture regiſtered*) is witneſſed by E. M. and G. H. both of, &c.; and the ſame is hereby required to be regiſtered by the ſaid H. C.; as witneſs his hand and ſeal.

H. C. (*L. S.*)

Signed and ſealed in the preſence of

E. M.

G. H.

If a leaſe or any other deed be from a corporation, or public body, that affixes merely a ſeal without any ſignature, it may be regiſtered by the leſſee's executing in the manner ſtated in the laſt precedent; and

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* Where the witneſſes to the execution of the leſſor cannot eaſily be procured.

and then the deſcription of its execution will be as follows: viz. " *Which ſaid* " *indenture is ſealed with the common* " *ſeal of the ſaid mayor and corpora-* " *tion;*" *(or other body;)* " *and the ſeal-* " *ing and delivery thereof by the ſaid* " *(the leſſee), for the conveniency of re-* " *giſtering, is witneſſed by* A. B. *of, &c.* " *and* C. D. *of,*" *&c.*

PRECEDENT, No. 6.

Memorial of an Aſſignment of the laſt-mentioned Leaſe, regiſtered at the ſame Time therewith, and written under the foregoing Memorial.

A MEMORIAL to be regiſtered of An indenture of aſſignment, bearing date, &c. made between the above-named H. C. of the one part, and G. R. of, &c. of the other part: whereby the ſaid H. C., in conſideration of one thouſand pounds (*or for the conſideration therein expreſſed* *) did aſſign unto the ſaid G. R. all and ſingular the premiſes mentioned and deſcribed in the above memorial; to hold to the ſaid G. R., his executors, adminiſtrators, and aſſigns, for the remainder of the

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* The ſetting forth the conſideration is not compulſory.

the term by the above memorialized indenture granted, ſubject to the rent and covenants in ſuch indenture contained. The execution of which ſaid indenture of aſſignment is witneſſed by the above-named E. M. and G. H.; and is now required to be regiſtered by the ſaid H. C.; as witneſs his hand and ſeal.

H. C. (*L. S.*)

Signed and ſealed in the preſence of

E. M.

G. H.

PRECEDENT, No. 7.

Memorial of a Leaſe of an Opera Box.

A MEMORIAL to be regiſtered of

An indenture, bearing date, &c. made between W. T. of, &c. of the one part, and W. F. of, &c. of the other part; whereby the ſaid W. T., in conſideration of one thouſand and fifty pounds, did demiſe to the ſaid W. F. all that box ſituate in the third tier or row up-ſtairs on the King's ſide of the King's Theatre in the Hay-market aforeſaid, commonly called the Opera Houſe, nearly adjoining the gallery, the ſame box being marked or numbered together with the liberty of paſſing and re-paſſing, going, coming, egreſs and regreſs to and for the ſaid W. F., his executors, adminiſtrators,

adminiſtrators, and aſſigns, and any perſons in his or their company, or by his or their permiſſion, not exceeding ſix perſons at one time, into the ſaid box, or any other part of the ſaid theatre, (except as therein is excepted,) to be preſent at and ſee all and every the operas, exhibitions, and other public entertainments (the concert of ancient muſic excepted) to be had in the ſaid theatre, or any part thereof; the admiſſion for ſuch ſix perſons to be by ſilver tickets, as therein mentioned; to hold to the ſaid W. F., his executors, adminiſtrators, and aſſigns, from the day of then laſt paſt, for the term of twenty-one years, at and under the yearly rent of a pepper-corn. Which ſaid indenture of demiſe, as to the execution thereof by the ſaid W. T. and W. F., is witneſſed by T. P. of, &c. and T. H. of the ſame place, his clerk; and a memorial thereof is hereby required to be regiſtered by the ſaid W. T.; as witneſs his hand and ſeal.

W. T. (*L. S.*)

Signed and ſealed in the preſence of

T. P.

T. H.

PRECEDENT, No. 8.

Memorial of an Aſſignment of a Leaſe; the Leaſe being previouſly regiſtered.

A MEMORIAL to be regiſtered of

An indenture of aſſignment, bearing date, &c. made between I. I. of, &c. of the one part, and R. S. of, &c. of the other part: whereby the ſaid I. I., in conſideration of five hundred pounds, (*or for the conſideration therein expreſſed,*) did aſſign to the ſaid R. S. all and ſingular the premiſes ſituate in the pariſh of Saint Pancras, which are particularly mentioned and ſet forth in a certain indenture of leaſe, dated, &c. made between A. B. therein deſcribed, of the one part, and the ſaid I. I. of the other part; a memorial whereof was regiſtered on the day of 179 , B. No. to hold to the ſaid R. S., his executors, adminiſtrators, and aſſigns, for the reſidue of the term by the ſaid indenture of leaſe granted, ſubject to the rent and covenants in the ſaid indenture of leaſe contained. Which ſaid indenture of aſſignment is witneſſed, as to the ſealing and delivery thereof, by the ſaid *I. I.*, by R. R. of, &c. Gentleman; and is hereby required to be

regiſtered by the ſaid *R. S.* *; as witneſs his hand and ſeal.

R. S. (*L. S.*)

Signed and ſealed in the preſence of
R. R.
I. H.

PRECEDENT, No. 9.

Memorial of a Deed Poll of Aſſignment, indorſed upon a Leaſe already regiſtered.

A MEMORIAL to be regiſtered of

A deed poll of aſſignment, bearing date, &c. indorſed upon an indenture bearing date, &c. made between I. T. R. of, &c. of the one part, and D. R. of, &c. of the other part: by which deed poll the ſaid D. R. did aſſign to E. F. of, &c. all and ſingular the premiſes in the ſaid indenture mentioned and contained, ſituate in the pariſh of Saint George, Hanover-ſquare, and which are particularly

* It is not requiſite that the individual party executing the deed ſhould execute likewiſe the memorial: as in the preſent inſtance, the aſſignee may require the regiſtry, by ſigning and ſealing the memorial, though the deed be under ſeal of the aſſignor only. This obſervation being duly impreſſed on the mind, as it holds in reſpect to *all* deeds, will frequently prevent trouble. It will be neceſſary, however, to recollect that one, at leaſt, of the witneſſes to the memorial muſt be a witneſs to the deed.

larly ſet forth in a memorial of the ſaid indenture, regiſtered on the day of 179 , in B. No. to hold for the remainder of the term by the ſaid indenture granted, ſubject to the rent and covenants therein expreſſed. Which ſaid deed poll, as to the ſealing and delivery thereof by the ſaid D. R., is witneſſed by Z. H. of, &c.; and is by the ſaid D. R. required to be regiſtered; as witneſs his hand and ſeal.

D. R. (*L. S.*)

Signed and ſealed in the preſence of

Z. H.

I. P.

Precedent, No. 10.

Memorial of an Aſſignment, by Way of Mortgage, to be regiſtered at the ſame Time with the Leaſe.

A MEMORIAL to be regiſtered of

An indenture of aſſignment and mortgage, bearing date, &c. made between R. R. of, &c. of the one part, and N. N. of, &c. of the other part, whereby the ſaid R. R. did aſſign to the ſaid N. N. all and ſingular the premiſes mentioned in the above memorial, and all his right, title, and intereſt whatſoever of and in the indenture of leaſe therein mentioned, ſubject nevertheleſs to redemption, upon payment by the ſaid R. R. to the ſaid N. N. of the

the ſum of two thouſand pounds, with lawful intereſt for the ſame, at the times and in manner expreſſed in the now memorializing indenture. And which indenture of aſſignment and mortgage is witneſſed by the above-named A. B. and C. D.; and is hereby required to be regiſtered by the ſaid R. R.; as witneſs his hand and ſeal.

R. R. (*L. S.*)

Signed and ſealed in the preſence of

A. B.

C. D.

PRECEDENT, No. 11.

Memorial of an Aſſignment by way of Mortgage, when the Leaſe has been previouſly regiſtered.

A MEMORIAL to be regiſtered of

An indenture of aſſignment and mortgage, bearing date, &c. made between R. R. of, &c. of the one part, and N. N. of, &c. of the other part; whereby the ſaid R. R. did aſſign to the ſaid N. N. all and ſingular the premiſes ſituate in the pariſh of Saint Paul, Covent Garden, which are mentioned and ſet forth in an indenture of leaſe, bearing date, &c. made between A. B. of the one part, and the ſaid R. R. of the other part; a memorial whereof was regiſtered on the day of 179, in B. No. to hold unto the ſaid N. N. for the remainder of the term by the ſaid leaſe granted;

granted; ſubject nevertheleſs to the redemption, &c. (as in the laſt Precedent).

PRECEDENT, No. 12.

Memorial of a Deed Poll (by way of Mortgage) indorſed upon a Leaſe.

A MEMORIAL to be regiſtered of

A deed poll of mortgage, bearing date, &c. indorſed upon an indenture of leaſe, bearing date, &c. and made between A. D. of, &c. of the one part, and B. E. of, &c. of the other part: by which deed poll the ſaid B. E. did aſſign to I. R. of, &c. all and ſingular the premiſes in the ſaid indenture mentioned and contained, ſituate in the pariſh of Saint Luke, Chelſea, and particularly deſcribed in a memorial of the ſaid indenture regiſtered on the day of 179 , in B. No. *(or, if the leaſe is intended to be regiſtered at the ſame time with the deed poll, ſay regiſtered immediately preceding this memorial)*; to hold unto the ſaid I. R. for the remainder of the term by the ſaid leaſe granted; ſubject nevertheleſs to redemption, upon payment by the ſaid B. E. to the ſaid I. R. of the ſum of five hundred pounds, with lawful intereſt for the ſame as therein expreſſed. Which ſaid deed poll is witneſſed by G. M. of, &c. Gentleman; and is hereby required to

to be regiſtered by the ſaid B. E.; as witneſs his hand and ſeal.

B. E. (*L. S.*)

Signed and ſealed in the preſence of

G. M.

W. L.

PRECEDENT, No. 13.

Memorial of a Deed Poll of further Charge, by way of Mortgage.

A MEMORIAL to be regiſtered of

A deed poll of further charge, bearing date, &c. indorſed upon an indenture of mortgage, (*or leaſe if the former charge has been by indorſement,*) bearing date, &c. and made between I. P. of, &c. of the one part, and R. T. * of, &c. of the other part; a memorial whereof was regiſtered on the day of 179 , in B. No. by which ſaid deed poll the ſaid I. P. did charge all and ſingular the premiſes, ſituate in the pariſh of Saint Clement Danes, with the payment to the ſaid R. T. his executors, adminiſtrators, and aſſigns of a further ſum of five hundred pounds, with lawful intereſt for the ſame. Which ſaid deed

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* The parties muſt be altered according to the circumſtances.

deed poll is witneſſed by I. B. of, &c. and W. H. of, &c.; and is hereby required to be regiſtered by the ſaid I. P.; as witneſs his hand and ſeal.

I. P. (*L. S.*)

Signed and ſealed in the preſence of

I. B.

W. H.

PRECEDENT, No. 14.

Memorial of an Aſſignment of Mortgage, from the Mortgagee to a third Perſon, by Deed Poll on the Mortgage Deed.

A MEMORIAL to be regiſtered of

A deed poll of aſſignment of mortgage, bearing date, &c. indorſed upon an indenture, bearing date, &c. and made between I. B. of, &c. of the one part, and W. H. of, &c. of the other part; a memorial whereof was regiſtered on the day of 179 , in B. No. by which ſaid deed poll the ſaid W. H. did aſſign unto G. H. of, &c. as well the therein within-written indenture, and all and ſingular the premiſes ſituate in the pariſh of Saint Pancras, thereby aſſigned, as alſo all ſum and ſums of money, both for principal and intereſt, ſecured and made payable to the ſaid W. H. thereon; which ſaid deed poll is witneſſed, &c. (as in the laſt Precedent).

PRECEDENT, No. 15.

Memorial of an Aſſignment of Mortgage from the Mortgagor and Mortgagee, by ſeparate Deed.

A MEMORIAL to be regiſtered of An indenture of aſſignment and mortgage, bearing date, &c. made between W. H. of, &c. (*the original mortgagee*) of the firſt part, I. B. of, &c. (*the owner of the equity of redemption*) of the ſecond part, and G. H. of, &c. of the third part: whereby the ſaid W. H. in conſideration of five hundred pounds paid to him by the ſaid G. H. (with the privity and conſent of the ſaid I. B.) did aſſign to the ſaid G. H., and the ſaid I. B. in conſideration of five ſhillings to him paid by the ſaid G. H. did aſſign, ratify, and confirm unto the ſaid G. H. all and ſingular the premiſes ſituate in the pariſh of Saint Pancras, mentioned and deſcribed in a certain indenture of mortgage, bearing date, &c. made between the ſaid I. B. of the one part, and the ſaid W. H. of the other part; a memorial whereof was regiſtered on the day of 179 , in B. No. to hold the ſaid premiſes unto the ſaid G. H. his executors, adminiſtrators, and aſſigns, for the remainder of the term of years granted thereof by an indenture of leaſe, recited in the ſaid indenture of mortgage; ſubject nevertheleſs to redemption, upon payment

by the ſaid I. B. to the ſaid G. H. of the ſum of five hundred pounds, with lawful intereſt for the ſame, at the times and in manner expreſſed in the now memorializing indenture. Which ſaid indenture of aſſignment of mortgage, as to the execution thereof by the ſaid W. H. is witneſſed by T. D. of, &c. and M. D. his wife; and as to the execution by the ſaid I. B. is witneſſed by I. M. of, &c. and T. C. his clerk *; and the ſame is hereby required to be regiſtered by the ſaid I. B.; as witneſs his hand and ſeal.

I. B. (*L. S.*)

Signed and ſealed in the preſence of

I. M.

T. C.

PRECEDENT, No. 16.

Memorial of Aſſignment of the Equity of Redemption by a Mortgagor to a third Perſon, either abſolute or conditional, referring to the original Mortgage.

A MEMORIAL to be regiſtered of

An indenture, bearing date, &c. made between P. P. of, &c. of the one part, and A. C. of, &c. of

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* However many parties there may be to a deed, *all* the atteſtations muſt be noticed in this manner.

of the other part: whereby the ſaid P. P., in conſideration of the ſum of ſeven hundred and twenty pounds, to him paid by the ſaid A. C., did aſſign to the ſaid A. C. all and ſingular the premiſes ſituate in the pariſh of Saint Mary-le-bone, which were demiſed by a certain indenture of leaſe, bearing date, &c. made between S. A. of the one part, and C. W. of the other part; a memorial whereof was regiſtered on the day of 179 , B. No. and all the right and equity of redemption whatſoever of the ſaid P. P. of and in the ſaid premiſes; to hold to the ſaid A. C. his executors, adminiſtrators, and aſſigns, for the remainder to come and unexpired of the term by the ſaid indenture of leaſe demiſed; ſubject to the payment of the rent thereby reſerved, and alſo to the payment of the principal ſum of one thouſand five hundred pounds, due and owing upon a certain mortgage in the indenture now to be regiſtered recited, made between the ſaid P. P. of the one part, and R. C. therein deſcribed of the other part; a memorial of which ſaid mortgage was regiſtered on the day of 179 , B. No. *. Which ſaid indenture of which this is a memorial, as to the execution thereof by the ſaid P. P. is witneſſed by

* If the deed by the preſent form of memorial intended to be regiſtered is only a mortgage, then introduce here, "and "ſubject alſo to redemption, &c. as in Precedent, No. 10."

by T. M. of, &c. and I. E. M. of, &c.; and is hereby required to be regiſtered by the ſaid P. P.; as witneſs his hand and ſeal.

P. P. (*L. S.*)

Signed and ſealed in the preſence of

T. M.

I. K.

Where ſecondary Mortgages are taken, it is always adviſable to give immediate notice of them to the prior mortgagee, that he may not make any advancement by further charge, and thereby diminiſh in value the equity of redemption.

PRECEDENT, No. 17.

Memorial of an Aſſignment in compliance with an Act of Parliament for Relief of Debtors, called the Lords' Act.

A MEMORIAL to be regiſtered of

An inſtrument, bearing date, &c. written under a certain ſchedule delivered into his Majeſty's Court of Common Pleas at Weſtminſter, in purſuance of a rule of the ſaid Court, made on the 29th day of May, in Eaſter term 1797, in a cauſe L——— againſt H———: by which inſtrument T. H. the defendant in the ſaid cauſe did, by the order and

direction of the ſaid Court of Common Pleas, aſſign, transfer, and ſet over unto G. G. Gentleman, his executors, adminiſtrators, and aſſigns, all and ſingular the debts, premiſes, and effects contained in the ſaid ſchedule; and which premiſes are therein deſcribed as follows: (that is to ſay,) all, (*follow the deſcription of premiſes, verbatim, from the ſchedule*,) upon and for the ſeveral uſes, truſts, ends, intents, and purpoſes mentioned in the act of parliament made for the relief of debtors with reſpect to the impriſonment of their perſons, and to oblige debtors who ſhall continue in execution in priſon beyond a certain time, and for ſums not exceeding what are mentioned in the act, to make diſcovery of, and deliver upon oath, their eſtates for their creditors' benefit. Which ſaid inſtrument is ſigned by the ſaid T. H. and is atteſted as to ſuch ſigning by W. H. one of the criers of the ſaid Court of Common Pleas at Weſtminſter; and is alſo ſigned by the ſaid G. G. in the preſence of, and is atteſted by T. G. of, &c.; and is hereby required to be regiſtered by the ſaid G. G.; as witneſs his hand and ſeal.

G. G. (*L. S.*)

Signed and ſealed in the preſence of

T. G.

I. R.

PRECEDENT, No. 18.

Memorial of an Aſſignment of a Debtor's Effects, in compliance with an Act of Inſolvency.

A MEMORIAL to be regiſtered of

A deed poll, bearing date, &c. under the hand and ſeal of William Rix Eſquire, clerk of the peace of and for the city of London: whereby, after reciting that D. R. formerly of, &c. late a priſoner for debt in his Majeſty's priſon of the Fleet, was diſcharged therefrom on the day of &c. by virtue of an act of parliament paſſed, &c. *(ſetting forth the date and title of the act of inſolvency)*, he the ſaid William Rix Eſquire, the ſaid clerk of the peace, did, in purſuance of the order to him for that purpoſe contained in the ſaid act, aſſign and convey all and ſingular the eſtates, effects, and premiſes of the ſaid D. R. veſted in him, to E. P. of, &c. upon the truſts, and for the intents and purpoſes in the ſaid act of parliament and deed poll particularly expreſſed. Which ſaid deed poll is witneſſed by C. H. of, &c. and J. W. his clerk; and is hereby required to be regiſtered by the ſaid E. P.; as witneſs his hand and ſeal.

E. P. (*L. S.*)

Signed and ſealed in the preſence of

C. H.

T. C.

PRECEDENT, No. 19.

Memorial of an Aſſignment by the Sheriff of Middleſex, under a Fieri Facias.

A MEMORIAL to be regiſtered of

An indenture of aſſignment bearing date, &c. made between S. L. and W. S. ſheriff of the county of Middleſex, of the one part, and W. D. of, &c. of the other part; reciting a writ of fieri facias, iſſued againſt the goods, chattels, and effects of W. B. therein mentioned: by virtue whereof, and for the conſiderations in the now regiſtering indenture expreſſed, the ſaid ſheriff did aſſign unto the ſaid W. D. his executors, adminiſtrators, and aſſigns, all that meſſuage, &c. (*ſetting out the parcels*); to hold to the ſaid W. D. his executors, adminiſtrators, and aſſigns, for and during all ſuch term and intereſt as the ſaid W. B. had therein at the time when the ſaid writ of fieri facias was delivered to the ſaid ſheriff, or at his office. Which ſaid indenture of aſſignment is witneſſed by I. K. and D. F. both of, &c. Gentlemen; and is hereby required to be regiſtered by the ſaid W. D.; as witneſs his hand and ſeal.

W. D. (*L. S.*)

Signed and ſealed in the preſence of

D. F.

I. B.

PRECEDENT, No. 20.

Memorial of a Declaration of Truſt, indorſed on a Purchaſe or Mortgage Deed.

A MEMORIAL to be regiſtered of
A deed poll, bearing date, &c. indorſed upon an indenture, bearing date, &c. made between I. R. of, &c. of the one part, and C. K. of, &c. of the other part: whereby the ſaid C. K. did acknowlege, teſtify, and declare, that the ſum of five hundred pounds mentioned to be advanced by him as the purchaſe *(or in mortgage)* of all and ſingular the premiſes in the pariſh of Saint Mary-le-bone mentioned and ſet forth in the ſaid indenture, and a memorial thereof regiſtered on the day of 179 , B. No. was the proper money of I. C. of, &c. Gentleman; and that the name of the ſaid C. K. was made uſe of in the ſaid indenture only in truſt for the ſaid I. C. and for no other purpoſe whatſoever; and the ſaid C. K. did by ſuch deed poll aſſign unto the ſaid I. C. his executors, adminiſtrators, and aſſigns, all and ſingular the ſame premiſes, *(and in the event of its being a mortgage ſay, and all ſum and ſums of money thereby ſecured,)* and all his term, right, and intereſt therein. Which ſaid deed poll is witneſſed by G. R. and H. T. both of, &c. and is hereby required

quired to be regiſtered by the ſaid C. K.; as witneſs his hand and ſeal.

C. K. (*L. S.*)

Signed and ſealed in the preſence of
G. R.
H. T.

PRECEDENT, No. 21.

Memorial of a Decree in the Court of Chancery.

A MEMORIAL to be regiſtered of

A decree, made by his Honor the Maſter of the Rolls, bearing date, &c. in a certain cauſe between W. M. Eſquire plaintiff, and I. M., C. T., and F. P., Eſquires, executors of the will of R. P. Eſquire deceaſed, and E. E. Eſquire, defendants: whereby it was (amongſt other things) ordered that the ſaid defendant E. E. ſhould deliver up to the ſaid defendants, the executors, certain indentures of leaſe and releaſe therein mentioned, bearing date the 10th and 11th days of October 1793, regiſtered in the ſame year, in B. No. and the bond and warrant of attorney therein alſo mentioned, bearing date the 11th day of the ſame October, to be cancelled. Which ſaid indentures were made between the ſaid R. P. deceaſed, of the one part, and the ſaid E. E. of the other part; and it was by the ſaid decree further ordered

ordered that the ſaid E. E. ſhould acknowledge ſatisfaction on the record of the judgment entered up on the ſaid bond; and of which decree a memorial is required to be regiſtered by the ſaid defendant T. P.; as witneſs his hand and ſeal.

T. P. (*L. S.*)

Signed and ſealed in the preſence of

W. H.

I. B.

PRECEDENT, No. 22.

Memorial of another Decree in the ſame Court.

A MEMORIAL to be regiſtered of

A decree of his Majeſty's High Court of Chancery, dated, &c. wherein M. R. H. (then the wife and now widow of E. H. Eſq. deceaſed) by W. C. her next friend, was the complainant, and T. H., E. K., T. K., the ſaid E. H., and I. E. Eſq. were the defendants: by which ſaid decree it is ſet forth, amongſt other things, (*any matter irrelevant to the object of regiſtry need not be introduced,*) that the ſaid E. H. being deſirous to make a ſettlement of four thouſand pounds bank-ſtock on the ſaid plaintiff, as a ſeparate proviſion for her during her coverture, as well as for a ſettlement in caſe ſhe ſhould ſurvive him; and that the ſame might be entirely at her diſpoſal during her coverture, the ſaid E. H. and the ſaid M. R. H. by indenture

denture bearing date the 26th of January 1776, made between them of the one part, and T. M. Gentleman, the defendant T. H., and S. H. Eſquire of the other part, did aſſign to the ſaid T. M., T. H. and S. H., and the ſurvivor of them, the ſaid four thouſand pounds; which was duly transferred to them, upon truſt, &c. *(mentioning the truſts,)* and by which decree it is alſo ſet forth that the ſaid four thouſand pounds bank-ſtock was transferred by the direction of the ſaid M. R. H. and under a power reſerved to her to direct the ſame, into the names of the ſaid defendants T. H., E. K., and T. K. upon the truſts therein aforeſaid; and that the ſaid four thouſand pounds bank-ſtock was ſold out by the ſaid defendants T. H., E. K., and T. K. about the 18th day of July 1777, for five thouſand two hundred pounds; and that the ſaid plaintiff having one thouſand ſeven hundred and eighty-five pounds, part of the ſaid five thouſand two hundred pounds, in her hands, was prevailed upon by the ſaid defendant E. K. to depoſit the ſame with Meſſrs. Drummond, bankers at Charing-Croſs in his name; and that afterwards the ſaid E. K. went to the ſhop of the ſaid Meſſrs. Drummond and took up the ſaid one thouſand ſeven hundred and eighty-five pounds; that the ſaid E. K. lent one thouſand three hundred pounds, part of the ſaid one thouſand ſeven hundred and eighty-five pounds,

to

to the defendant I. E. on his bond, and *an aſſignment of a certain piece or parcel of ground in the pariſh of Saint Mary-le-bone in the county of Middleſex, and a meſſuage or tenement, &c. thereon erected and built, for the remainder of a term of ſeventy-one years, ſubject to ſuch rent as therein mentioned*; and that the ſaid E. K. had taken the ſaid bond and aſſignment in his own name, and in like manner as if the ſaid one thouſand three hundred pounds was his own proper money, and not any part of the produce of the ſaid truſt; that the ſaid plaintiff had applied to the ſaid defendant E. K. to aſſign the ſaid premiſes ſo aſſigned to him as aforeſaid, for ſecuring the ſaid one thouſand three hundred pounds, upon the truſts of the ſaid ſettlement; and that it was by the plaintiff's bill of complaint prayed, (amongſt other things,) that it might be referred to one of the maſters of the ſaid court to approve of one or more truſtee or truſtees, in the ſtead of the ſaid E. K. and T. K.; *and that the ſaid defendant E. K. and the ſaid I. E. might aſſign the ſaid mortgaged premiſes to the ſaid T. H. and ſuch new truſtees, to be approved as aforeſaid, upon the truſts of the ſaid ſettlement of the 26th of January* 1776; *and that, in the mean time, the ſaid I. E. might be reſtrained from paying, and the ſaid defendant E. K. from receiving from him the ſaid I. E. or from any other perſon or perſons whomſoever, the ſaid principal mortgage money, and the intereſt*

intereſt due and to grow due thereon, or on any part thereof: and that the ſaid E. K. might alſo be reſtrained by injunction from aſſigning the ſaid mortgaged premiſes, or any of them, and alſo the ſaid bond, or the principal money and intereſt thereby ſecured and to grow due thereon, or any part thereof; and that the principal money and intereſt might be decreed to be paid to the ſaid defendant T. H. and ſuch new truſtee or truſtees as aforeſaid. And by which decree it is alſo ſet forth, that the ſaid cauſe coming on to be heard before his Honor the Maſter of the Rolls; his Honor did order, amongſt other things, that Mr. Holford, one of the maſters of the ſaid High Court of Chancery, ſhould appoint two proper perſons to be truſtees in the room of the ſaid defendants E. K. and T. K.; *and that the ſaid defendant E. K. ſhould aſſign the mortgage in the pleadings mentioned for ſecuring one thouſand three hundred pounds, and intereſt, unto the ſaid defendant T. H. and ſuch new truſtees to be appointed as aforeſaid, upon the truſts and for the benefit of the ſeveral perſons who ſhould appear to be entitled to or intereſted in the ſaid truſt fund, under and according to the ſaid ſettlement of the ſaid 26th day of January 1776: and his Honor did further order, that the ſaid defendant T. H. and ſuch new truſtees ſo to be appointed as aforeſaid, ſhould proceed to get in the ſaid one thouſand three hundred pounds ſo ſecured by the ſaid mortgage, and all intereſt thereon computed due by the ſaid maſter's report in the ſaid*

decree particularly ſet forth; and that they ſhould pay the ſaid one thouſand three hundred pounds and intereſt, as and when they ſhould get in the ſame, into the Bank of England, with the privity of the accountant-general of the ſaid court, to be there placed to the credit of the ſaid cauſe, ſubject to the further order of the ſaid court; and that the ſaid one thouſand three hundred pounds ſhould be laid out in the purchaſe of three per cent. annuities, in the name and with the privity of the ſaid accountant-general, in truſt for the benefit of ſuch perſons as ſhould appear intereſted in or entitled to the truſt fund in queſtion in the ſaid cauſe, under and according to the ſaid ſettlement; and that the ſaid accountant-general ſhould declare the truſt thereof accordingly, ſubject to the further order of the ſaid court: and his Honor did further order, that the ſaid I. E. ſhould pay the ſum of money by the ſaid maſter's report appearing to be the intereſt of the ſaid mortgage, due on the day of into the Bank of England, with ſuch privity and ſubject to ſuch order, and in truſt as aforeſaid. And which ſaid decree is hereby required to be regiſtered in the office for regiſtering deeds, wills, and other matters reſpecting eſtates in the county of Middleſex, by me the ſaid M. R. H. the plaintiff in the ſaid cauſe; as witneſs my hand and ſeal.

M. R. H. (*L. S.*)

Signed and ſealed in the preſence of

B. W.

I. W.

PRECEDENT, No. 23.

Memorial of a Grant of Annuity.

A MEMORIAL to be regiſtered of An indenture, bearing date, &c. made between M. R. of, &c. of the firſt part, W. F. of, &c. of the ſecond part, and I. R. of, &c. a truſtee nominated by and on the behalf of the ſaid W. F. of the third part: whereby the ſaid M. R., in conſideration of the ſum of one thouſand pounds, (*or for the conſideration therein expreſſed,*) did grant, bargain, ſell, and confirm unto the ſaid W. F. and his aſſigns, for and during the natural life of him the ſaid W. F., one annuity or clear yearly rent or ſum of one hundred pounds, to be iſſuing and payable out of and charged upon all and ſingular the premiſes, ſituate in the pariſh of Edmonton, mentioned and deſcribed in a certain indenture of leaſe, (*or as the caſe may be,*) bearing date, &c. made between I. K. of, &c. of the one part, and the ſaid M. R. of the other part; a memorial whereof was regiſtered on the day of 179 , in B. No. (*if the premiſes have not been deſcribed in any memorial already regiſtered, the deſcription muſt be taken verbatim from the deed of annuity*); and whereby alſo, in conſideration of ten ſhillings, the ſaid M. R. did aſſign unto the ſaid I. R. his executors, adminiſtrators, and aſſigns, all and every the ſame

premiſes charged as aforeſaid, and all his eſtate, right, and intereſt therein; to hold the ſame for the reſidue of the term of years by the ſaid indenture of leaſe *(or other deed)* granted, but nevertheleſs upon the truſts and for the intents and purpoſes in the ſaid deed of annuity explained. Which ſaid indenture now to be regiſtered is witneſſed, as to the execution thereof by the ſaid M. R., by H. O. of, &c. and S. F. his clerk; as to the execution thereof by the ſaid W. F. is witneſſed by S. B. of, &c. and S. B. jun. his ſon; and the execution by the ſaid I. R. is witneſſed by I. B. and W. R. his ſervants; and the ſame indenture is required to be ſo regiſtered by the ſaid M. R.; as witneſs his hand and ſeal.

M. R. (*L. S.*)

Signed and ſealed in the preſence of

I. B.

W. R.

PRECEDENT, No. 24.

A Memorial of a Rule of the Court of Common Pleas to ſet aſide an Annuity.

A MEMORIAL to be regiſtered of

A rule of his Majeſty's court of Common Pleas, in the words and figures following:—Michaelmas term, in the 24th year of the reign of King George

George III. Thurſday the 20th of November. Upon reading a rule made in this cauſe on Monday the 10th of this inſtant, and the affidavit of I. L. the defendant, lately deceaſed; the affidavit of I. A.; the affidavits of W. G., R. H., and T. T., Gentlemen, and the memorial thereto annexed; another affidavit of the ſaid W. G.; the affidavit of E. P.; the affidavit of F. S.; the affidavit of I. I. Gentleman; and two affidavits of the plaintiff I. H.; and on hearing counſel on both ſides, it is ordered, that the judgment ſigned in this cauſe be ſet aſide, and the bond and warrant of attorney given for ſecuring the annuity of ſixteen pounds, *together with all other deeds and ſecurities relating thereto**, ſhall be delivered up to T. P. and W. G. (executors of the laſt will and teſtament of the defendant) to be cancelled, purſuant to the act of parliament for regiſtering the grants of life annuities, and for the better protecting infants againſt ſuch grants: and it is further ordered, that the ſaid I. H. do and ſhall pay to the ſaid T. P. and W. G. the coſts of this application, to be taxed by one of the prothonotaries of this court. By the Court.—Ex^d, Skinn.—On the motion of Serjeant Bolton for the ſaid T. P. and W. G.—Serjeant Adair for the plaintiff. Which ſaid rule of court is hereby required to be regiſtered by

* This annuity was ſecured on premiſes in the county of Middleſex, and the deed charging it regiſtered.

W. G. of Chelſea in the county of Middleſex, carpenter, one of the executors of the above-named defendant I. L.; as witneſs his hand and ſeal.

W. G. (*L. S.*)

Signed and ſealed in the preſence of

E. C.

I. K.

PRECEDENT, No. 25.

Memorial of Indentures of Leaſe and Releaſe, or Conveyance in Fee.

A MEMORIAL to be regiſtered of Indentures of leaſe and releaſe, bearing date reſpectively the and day of &c; the leaſe made between P. D. of, &c. of the one part, and M. R. o; &c. of the other part; and the releaſe made between the ſaid P. D. and W. his wife of the one part, and the ſaid M. R. of the other part: by which ſaid leaſe, in purſuance of the ſtatute made for transferring uſes into poſſeſſion, and in conſideration of five ſhillings, the ſaid P. D. did bargain and ſell unto the ſaid M. R. for one whole year, and by which ſaid releaſe the ſaid P. D. and W his wife, for the conſiderations therein expreſſed, did grant, bargain, ſell, and releaſe unto the ſaid M. R. his heirs and aſſigns, all that (*here deſcribe the parcels, or refer to a conveyance regiſtered where*

the ſame premiſes are ſet out, as in Precedent No. 29); to hold to the ſaid M. R. his heirs and aſſigns for ever. Which ſaid indentures of leaſe and releaſe, as to the execution thereof by the ſaid P. D., are witneſſed by P. P. of, &c. and P. N. his clerk; and the execution of the releaſe by the ſaid W. the wife of the ſaid P. D. is witneſſed by I. I. her ſervant; and the ſame indentures of leaſe and releaſe are hereby required to be regiſtered by the ſaid P. D.; as witneſs his hand and ſeal.

P. D. (*L. S.*)

Signed and ſealed in the preſence of.

P. P.

P. N.

PRECEDENT, No. 26.

Memorial of other Indentures of Leaſe and Releaſe to a Truſtee; in the latter of which a Party diſcharges the Eſtate conveyed from a Legacy.

A MEMORIAL to be regiſtered of Indentures of leaſe and releaſe, bearing date reſpectively the and days of &c; the leaſe being for one year, and made between C. D. of, &c. of the one part, and W. W. of, &c. of the other part; and the releaſe being of four parts, and made between the ſaid C. D. and H. his

wife, of the firſt part; I. G. of, &c. of the ſecond part; the ſaid W. W. of the third part, and I. W. of, &c. a truſtee for the ſaid W. W. of the fourth part: by which ſaid releaſe, for the conſiderations therein mentioned, the ſaid C. D. did grant, bargain, ſell, alien, releaſe, and confirm unto the ſaid W. W. and his heirs, all that freehold meſſuage or tenement, &c. *(deſcribing the parcels, or referring as directed in the laſt Precedent)*; to hold the ſame unto the ſaid W. W., his heirs and aſſigns, to the uſe of ſuch perſon or perſons, for ſuch eſtate and eſtates as the ſaid W. W. ſhould by deed or will appoint; and in default of ſuch appointment, to the uſe of the ſaid I. W. his heirs and aſſigns, during the life of the ſaid W. W., in truſt for the ſaid W. W. and his aſſigns during his life; remainder to the uſe of the ſaid W. W. his heirs and aſſigns for ever; and by the ſaid indenture of releaſe the ſaid I. G. did acquit, releaſe, exonerate, and diſcharge the ſaid W. W. his heirs, appointees, deviſees, and aſſigns, and the ſaid meſſuage and premiſes, of and from the legacy of ſeven hundred pounds given to him by the will of E. K. deceaſed, as in the ſaid releaſe is mentioned. Which ſaid indenture of leaſe is atteſted by I. H. of, &c. and I. M. of, &c.; and which ſaid releaſe, as to the execution thereof by the ſaid C. D. and H. his wife, is witneſſed by the ſaid I. H. and I. M.; and by I. G. jun. and G. W., both of, &c. as to the

execution

execution by all the other parties; and the ſame indentures are hereby required to be regiſtered by the ſaid I. G.; as witneſs his hand and ſeal.

I. G. (*L. S.*)

Signed and ſealed in the preſence of

I. H.

I. M.

If a bargain and ſale accompanies the conveyance, a memorial thereof may be written upon the ſame piece of parchment with the memorial of the leaſe and releaſe; and when there is alſo an aſſignment of term, that may come under the bargain and ſale; as one deſcription of parcels in the firſt memorial will ſuffice for all: every memorial muſt, notwithſtanding, be ſeparately executed and atteſted.

PRECEDENT, No. 27.

Memorial of Bargain and Sale attending Leaſe and Releaſe; and to follow the Memorial of thoſe Deeds.

A MEMORIAL to be regiſtered of

An indenture of bargain and ſale, intended to be inrolled in the court of bearing date, &c. made between the above-named, &c. *(ſtating the parties,)* of and concerning the ſame premiſes as are mentioned and contained in certain indentures

of

of leaſe and releaſe; a memorial whereof is above written. Which ſaid indenture of bargain and ſale is witneſſed by the above-named and and is hereby required to be regiſtered by the ſaid as witneſs his hand and ſeal.

** ** (*L. S.*)

Signed and ſealed in the preſence of

** **
** **

PRECEDENT, No. 28.

Memorial of an Aſſignment of Term, to attend the Inheritance of the ſame Premiſes and to follow the Memorial of Bargain and Sale.

A MEMORIAL to be regiſtered of

An indenture, bearing date, &c. made between the above-named, &c. *(introducing the parties,)* purporting to be an aſſignment of a term of five hundred years, to attend the inheritance, of and concerning the ſame premiſes as are mentioned and ſet forth in the firſt above-written memorial. Which ſaid indenture of aſſignment is witneſſed by the above-named and and is hereby required to be regiſtered by the ſaid as witneſs his hand and ſeal.

** ** (*L. S.*)

Signed and ſealed in the preſence of

** **
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The

The memorials of bargains and ſales, and aſſignments under commiſſions of bankrupt, may be rendered extremely ſhort; as, after ſtating dates and parties names, according to the forms before laid down, it will be neceſſary only to ſay, "of and concerning all the ſaid bankrupt's eſtates," &c. deſcribing them in the general way, uſual in ſuch caſes, and as they are mentioned in the deed. It muſt be remembered that no extraneous deſcription can be inſerted in the memorial.

PRECEDENT, No. 29.

Memorial of Indentures of Leaſe and Releaſe, by Way of Mortgage.

A MEMORIAL to be regiſtered of Indentures of leaſe and releaſe, bearing date reſpectively the and days of &c.; the leaſe made between A. C. of, &c. of the one part, and C. W. of, &c. of the other part; and the releaſe made between the ſaid A. C. and W. his wife, of the one part, and the ſaid C. W. of the other part: by which ſaid leaſe, in purſuance of the ſtatute made for transferring uſes into poſſeſſion, and in conſideration of five ſhillings, the ſaid A. C. did bargain and ſell unto the ſaid C. W. for one whole year, and by which ſaid releaſe

leaſe the ſaid A. C. and W. his wife did grant, bargain, ſell, alien, releaſe, and confirm unto the ſaid C. W. *(here ſet out the parcels as in the releaſe, or refer to the regiſtry of a conveyance where they have been deſcribed as follows)*, all and ſingular the premiſes, ſituate in the pariſh of Saint Mary-le-bone, mentioned and compriſed in certain indentures of leaſe and releaſe, bearing date, &c. the leaſe made between, &c. and the releaſe between, &c.; a memorial whereof was regiſtered on the day of 179, in B. No. ; to hold to the ſaid C. W. his heirs and aſſigns for ever; ſubject nevertheleſs to redemption, upon payment by the ſaid A. C. his heirs, executors, adminiſtrators, or aſſigns, to the ſaid C. W. his heirs or aſſigns, of the ſum of one thouſand pounds, and lawful intereſt, as in the ſaid indenture of releaſe now to be regiſtered is expreſſed. Which ſaid indentures of leaſe and releaſe are reſpectively witneſſed, as to the execution thereof by the ſaid A. C., by I. D. of, &c. and I. H. his clerk; and the execution of the ſaid releaſe, by the ſaid W. the wife of the ſaid A. C., is witneſſed alſo by the ſaid I. D.; and the ſame are hereby required to be regiſtered by the ſaid C. W.; as witneſs his hand and ſeal.

C. W. (*L. S.*)

Signed and ſealed in the preſence of

I. D.

I. H.

If

If a mortgage be by demiſe, after deſcribing the date and parties, it will be neceſſary only to follow the words of grant, as expreſſed in the deed, viz. Whereby the ſaid A. C. did grant, bargain, ſell, and demiſe, &c.; and to purſue the ſame courſe in reſpect to the habendum.

PRECEDENT, No. 30.

Memorial of an Indenture declaring the Uſes of a Fine.

A MEMORIAL to be regiſtered of

An indenture, bearing date, &c. made between I. R. of, &c. and R. his wife, of the one part, and I. W. of, &c. of the other part: whereby it is covenanted and declared, that a certain fine ſur conuſance de droit come ceo, &c. agreed to be levied by the ſaid I. R. and R. his wife, at the time or times therein mentioned, of and concerning *(here ſet forth the premiſes)*, ſhould be and enure, &c. *(declaring the uſes as expreſſed in the deed, or ſaying generally)* to the uſes, intents, and purpoſes in the now memorializing indenture explained. Which ſaid indenture is witneſſed by C. L. of, &c. and E. L. his ſon; and the ſame is hereby required to be regiſtered by the ſaid I. R.; as witneſs his hand and ſeal.

I. R. (*L. S.*)

Signed and ſealed in the preſence of

C. L.

E. L.

PRECEDENT, No. 31.

Memorial to regiſter a Deed after all or any of the Parties are dead.

A MEMORIAL to be regiſtered of

An indenture, bearing date, &c. made between, &c. *(follow the foregoing precedents in the ſtatement of parties and parcels, and the deſcription of the deed and conclude thus)*. Which ſaid indenture, as to the execution thereof by the ſaid T. D. and B. S. *(the parties who had originally executed)*, is witneſſed by A. B. and C. D, both of, &c.; and as to the execution thereof by I. K., executor *(or adminiſtrator as the caſe may be)* of the laſt will and teſtament of the ſaid T. D., is witneſſed by L. M. of, &c. and M. W. of, &c.; and the ſame is hereby required to be regiſtered by the ſaid I. K.; as witneſs his hand and ſeal.

I. K. (*L. S.*)

Signed and ſealed in the preſence of

L. M.

M. W.

PRECEDENT, No. 32.

Memorial to regiſter a Deed previouſly executed by all Parties, where there is a Difficulty to procure the Attendance of any of the original Witneſſes to prove ſuch Execution.

A MEMORIAL to be regiſtered of

An indenture, bearing date, &c. made between *(purſuing the directions contained in the laſt precedent, and conclude thus)*. Which ſaid indenture, as to the execution thereof by all the ſaid parties, is witneſſed by A. B. of, &c. and C. D. of, &c. *(or if there are ſeveral atteſtations enumerate them)*; and as to the re-execution thereof by one of the ſaid parties, for the purpoſe of regiſtering, is witneſſed by E. F of, &c. and G. H. his clerk; and the ſame indenture is now required to be regiſtered by the ſaid ** ** ; as witneſs his hand and ſeal. ** ** (*L. S.*)

Signed and ſealed in the preſence of

E. F.

G. H.

In marriage ſettlements, or deeds of family truſt, the directions before communicated will ſupply every requiſite intelligence, except in one particular, namely, the neceſſity, or otherwiſe, of introducing in the memorial the uſes and limitations. If they are not very

very extended, and no reaſon preſents itſelf for the omiſſion, they are generally inſerted, under an idea that the regiſtry is a depôt for the ſafe cuſtody of titles, in caſe deeds are deſtroyed. Should they be intended for introduction, their whole eſſence at leaſt muſt be given, with the avoidance only of general words: on the contrary, ſhould it be propoſed to omit them, the expreſſions of the habendum in the memorial will be to the following effect: "To "hold unto the ſaid and "&c. upon the truſts, and for the uſes, "ends, intents, and purpoſes in the ſaid "indenture now to be regiſtered particularly expreſſed and declared of and concerning the ſame."

PRECEDENT, No. 33.

Memorial of a Renter's Share in Drury-Lane Theatre.

A MEMORIAL to be regiſtered of

An indenture, bearing date, &c. made between A. W. of, &c. R. F. of, &c. and T. H. of, &c. of the one part, and P. W. of, &c. of the other part: whereby the ſaid A. W., R. F., and T. H., by virtue of an indenture of thirteen parts, bearing date

date the 13th day of June in the year of our Lord 1793, and of another indenture of two parts, bearing date the day after the date of the ſaid indenture of thirteen parts, and in part execution of the truſts thereby reſpectively repoſed in them, did grant, bargain, and ſell unto the ſaid P. W. her executors, adminiſtrators, and aſſigns, one clear rent or ſum of two ſhillings and ſixpence for every night whereon any theatrical or other performance ſhould be publicly exhibited in the new Theatre-Royal of Drury-Lane, either by virtue of the then preſent or any future patent or patents, licence or licences, which might be granted to or acquired by the proprietors or truſtees of the ſaid theatre, or in any other theatre to be erected or occupied by virtue of ſuch patent or patents, licence or licences, or any of them, in caſe the ſaid new theatre ſhould be deſtroyed by fire or diſuſed; and did thereby charge and make the ſame rent to be iſſuing and payable upon and out of the ſaid theatre and premiſes, and the rents and profits thereof; to hold the ſame rent unto the ſaid P. W. her executors, adminiſtrators, and aſſigns, for the term of one hundred and three years, to be computed from the 25th day of December 1791. The execution of which ſaid indenture by the ſaid A. W., R. F., and T. H. is witneſſed by I. S. of, &c. and W. L. of, &c.; and the execution thereof by the ſaid P. W. is witneſſed by G. P.

of, &c.; and the ſame is hereby required to be regiſtered by the ſaid P. W.; as witneſs her hand and ſeal.

P. W. (*L. S.*)

Signed and ſealed in the preſence of

G. P.

E. L.

PRECEDENT, No. 34.

Memorial of a Judgment.—The common Form.

A MEMORIAL to be regiſtered of

A judgment in his Majeſty's Court of King's Bench, *(or as the caſe may be,)* of term in the year of the reign of King George the Third, between A. B. plaintiff and C. D. defendant, in a plea of debt for pounds, and coſts ſixty-three ſhillings.

(Leave a ſpace of about an inch, and proceed thus:)

I do hereby certify, that judgment was ſigned in the above cauſe the day of 179 .

R. F.

(Immediately after which certificate engroſs the following affidavit:)

I. I. clerk to K. L. of the Inner Temple, London, Gentleman, maketh oath and ſaith, that he was

was preſent and did ſee R. F. Eſquire, Secondary of the Court of King's Bench, ſign the above certificate.

I. I.

Sworn at the Public Office in Southampton Buildings, Chancery-Lane, this day of 179 , before me,

I. E.

The judgment being in the King's Bench, the above certificate may be ſigned by Robert Forſter Eſq., as ſecondary, or Frederick Groves Eſq. his deputy; or, in their abſence, by Peter Prevoſt Eſq., clerk of the dockets, or Mr. Clarke his deputy: in the Common Pleas, by Mr. Sherwood or Mr. Hewlett of the prothonotaries' office; and in the Exchequer, by Thomas Dax Eſq., deputy clerk of the Pleas there. The uſual ſtamp muſt be attached to the affidavit; which is ſworn before a Maſter in Chancery at the Public Office, or before a Judge in either of the Courts of Record at Weſtminſter.

PRECEDENT, No. 35.

Memorial of a Judgment, propoſed to extend to Leaſehold Property.

A MEMORIAL to be regiſtered of

A judgment in his Majeſty's Court of Common Pleas, of term in the year of the reign of King George the Third, between I. R. plaintiff, and P. P. now or late of the pariſh of Saint Mary-le-bone in the county of Middleſex, Gentleman, defendant, for ſix hundred and fifty-three pounds damages; and alſo of a writ of fieri facias iſſued thereon, directed and delivered to the ſheriff of Middleſex, to levy the damages aforeſaid on the goods and chattels of the defendant.

I do hereby certify, that judgment was ſigned in the above cauſe the day of 179 .

T. S.

I do hereby certify, that a writ of fieri facias in the above-mentioned cauſe, for the above-mentioned damages, was left at the office of the ſheriff for the county of Middleſex, on the day of 179 .

I. B.

G. G. of, &c. maketh oath, that he was preſent and did ſee T. S. Gentleman, clerk to the prothonotaries of the Court of Common Pleas, and I. B. Gentleman,

Gentleman, who acts as under-ſheriff for the county of Middleſex, ſign the certificates reſpectively above written.

G. G.

Sworn, &c. *(as directed in the note to the laſt Precedent).*

The idea of the ſecond certificate has originated from the opinion of Mr. Butler, in reference to the ſtatute of frauds and perjuries, ſet out in page 93.

PRECEDENT, No. 36.

A Certificate of the Plaintiff in a Judgment, to effect its Diſcharge from the Regiſter Books.

To the Regiſters for the County of Middleſex.

I, A. B. of, &c. do hereby certify, that C. D. of, &c. *(the defendant)* hath paid and ſatisfied to me all ſuch ſum and ſums of money as was or were due and owing upon a judgment recovered in his Majeſty's Court of of the term of in the year of the reign of King George the Third, by me the ſaid A. B. againſt the ſaid C. D. for debt and coſts; a memorial whereof was regiſtered on the day of in the year of our Lord 179 , in B. No. and I do

 hereby

hereby require an entry of ſuch payment and ſatisfaction to be made in the regiſters' book wherein the ſame is regiſtered; as witneſs my hand this day of in the year of our Lord 179 .

A. B.

Signed, and ſatisfaction acknowledged, in the preſence of

I. K. of, and
L. M. his clerk.

The ſame attendance of the witneſſes and form of oath are neceſſary in diſcharging judgments as directed on diſcharging mortgages. See note on Precedent No. 40.

PRECEDENT, No. 37.

Memorial of a Judgment of Outlawry.

A MEMORIAL to be regiſtered of

A judgment of outlawry in his Majeſty's Court of King's Bench, of Michaelmas term in the thirty-third year of the reign of King George the Third, againſt H. S. late of at the ſuit of S. H. for five hundred pounds damages.

22d December 1792. I do hereby certify, that the judgment of outlawry above referred to was filed with me, and now remains in my cuſtody, as

as clerk of the treaſury of the Court of King's Bench at Weſtminſter.

A. E.

A. R. of, &c. maketh oath and ſaith, that on the day in the year above mentioned, he this deponent was preſent and did ſee A. E. Eſq. clerk of the treaſury of the Court of King's Bench ſign the above certificate.

A. R.

Sworn, &c.

A certificate in the form pointed out in Precedent No. 34, with the addition of the words "of outlawry," may be ſubſcribed by the officer who ſigns the judgment, or the one above recommended may be ſubſtituted by Andrew Edge Eſq. the clerk of the treaſury, ſo ſoon as ſuch judgment becomes filed with him. For other directions ſee Precedent No. 34.

PRECEDENT, No. 38,

A Certificate to reverſe a Judgment of Outlawry.

In the King's Bench, between I. S. and R. S. plaintiffs, and I. A. defendant *(here leave a ſpace of about an inch)*. I, A. G. of, &c. Gentleman, *(clerk of the outlawries,)* do hereby certify, that the outlawry pronounced in this cauſe, and all the

proceedings thereon, are reverſed, purſuant to an order in the ſame cauſe lately made for that purpoſe in the ſaid Court; as witneſs my hand this day of 179 .

A. G.

Witneſs I. W.
I. R.

I. R. of, &c. maketh oath and ſaith, that he this deponent did ſee A. G. clerk of the outlawries of the ſaid Court ſign the above-written certificate.

I. R.

Sworn, &c. *(before a Judge or Maſter in Chancery).*

PRECEDENT, No. 39.

A Memorial of a Will, Probate or Office Copy.

A MEMORIAL to be regiſtered of

The probate *(or the original will, or the office copy, as the caſe may be)* of the laſt will and teſtament of T. R. late of in the pariſh of in the county of bearing date, &c.: by which will the ſaid teſtator did give and deviſe unto, &c. *(as in the will)*; to hold, &c. *(if the deviſor be in truſt, ſay)* upon the truſts, and for the ends, intents, and purpoſes in ſuch will particularly expreſſed. Which ſaid will was executed by

the ſaid teſtator, in the preſence of A. B. of, &c. C. D. of, &c. and E. F. of, &c.; and the ſame *(or the probate or office copy thereof)* is hereby required to be regiſtered by Y. Z. * one of the deviſees therein named; as witneſs his hand and ſeal.

Y. Z. (*L. S.*)

Signed and ſealed in the preſence of

G. W.

S. H.

On regiſtering wills, probates, &c. the oath adminiſtered to the witneſs attending the regiſter has reference to the ſigning and ſealing of the memorial only; in which it differs from the principle of regiſtering deeds; where the witneſs proves alſo the execution of the inſtrument to which ſuch memorial refers.

---

* The regiſtry may be required by any one of the deviſees, his or their heirs, executors, adminiſtrators, guardians, or truſtees.

PRECEDENT, No. 40.

A Certificate to diſcharge a Mortgage.

To the Regiſters for the County of Middleſex.

I, A. B. of, &c. *(the mortgagee * or mortgagees in the deed, or his or their executors or adminiſtrators,)* do hereby certify, that C. D. of, &c. hath paid and ſatisfied all ſuch ſum and ſums of money as was or were due and owing upon an indenture of mortgage, bearing date the day of in the year of our Lord 179 , made between the ſaid C. D. of the one part, and me the ſaid A. B. of the other part; a memorial whereof was regiſtered on the day of the ſame month of 179 , B. No. and I do hereby require an entry of ſuch payment and ſatisfaction to be made in the regiſters' book wherein the ſame is regiſtered, purſuant to the act of parliament in that caſe made and provided; as witneſs my hand this day of 179 .

A. B.

Signed, and ſatisfaction acknowledged, in the preſence of

I. K. of, &c.
L. M. of, &c.

---

* And in Yorkſhire muſt be executed by mortgagor as well as mortgagee.

Both

Both the witneſſes to certificates muſt be ſworn before the regiſter, (or, the affidavit being made in the country, before a Maſter extraordinary in Chancery,) that they ſeverally ſaw the mortgagee or mortgagees ſign ſuch certificate, and that they heard him or them, at the time of ſuch ſigning, acknowledge that all money due on the mortgage (or judgment) therein referred to was fully paid and ſatisfied. Where the party or parties acknowledging ſatisfaction reſide at a diſtance from London, an affidavit muſt be written on parchment, with the proper ſtamp, and ſworn before a Maſter extraordinary in the High Court of Chancery. Both the certificate and affidavit may be upon the ſame piece of parchment, and the latter will be in the terms following:

PRECEDENT, No. 41.

Affidavit of ſeeing Certificate of Satisfaction ſigned, and hearing Acknowledgment.

E. F. of, &c. and C. D. of, &c., each ſpeaking for himſelf ſeverally, make oath and ſay, that they were preſent and did ſee the above-named A. B. ſign

ſign the above certificate, and the ſaid A. B. at the time of ſigning the ſame did, in theſe deponents' hearing, acknowledge himſelf to be fully paid and ſatisfied for all ſum and ſums of money due and owing upon the indenture of mortgage * mentioned in the ſaid certificate.

E. F.
C. D.

Sworn at in the county
of this day of
179 , before me,
I. Z.
A Maſter extraordinary in Chancery.

PRECEDENT, No. 42.

Affidavit of the Execution of a Deed and Memorial, neceſſary only when all the Parties live remote from London. To be engroſſed on Parchment, with the proper Affidavit Stamp annexed.

A. B. of, &c. maketh oath and ſaith, that he this deponent was preſent and did ſee C. D. of, &c. ſign and ſeal the memorial *hereunto annexed (or if the memorial and affidavit are engroſſed upon the ſame piece of parchment, which is the beſt me-*

---

* Or judgment.

thod,

thod, then ſay the above memorial); and this deponent further ſaith, that he was preſent and did ſee the deed referred to in ſuch memorial duly ſigned, ſealed, and delivered by the ſaid C. D.; and *(ſetting forth the parties whoſe execution the witneſs has atteſted)*.

A. B.

Sworn, &c. *(as the laſt Precedent)*.

PRECEDENT, No. 43.

Memorial of a Statute.

A MEMORIAL to be regiſtered of A ſtatute ſtaple *(or ſtatute merchant, as the caſe may be)*: whereby A. B. of the pariſh of in the county of Gentleman, acknowledged before the Right Honorable Lloyd Lord Kenyon, Chief Juſtice of his Majeſty's Court of King's Bench, that he owed to C. D. of the pariſh of in the county of Gentleman, the ſum of two thouſand pounds, to be paid on the day of 179 .

(Here leave a ſlight break.)

I do hereby certify, that the recognizance above mentioned was inrolled the day of 179 .

W. C.

E. T. clerk to G. H. of, &c. maketh oath, that he did ſee W. C. Eſq. clerk of the recognizances, in the nature of ſtatute ſtaple, ſign the above certificate.

E. T.

To be ſworn before a Maſter in Chancery, and written upon parchment with proper affidavit ſtamp.

PRECEDENT, No. 44.

A Memorial of a Recognizance in the Court of Chancery.

A MEMORIAL to be regiſtered of

A recognizance entered into in his Majeſty's High Court of Chancery, bearing date at Weſtminſter the day of 179 , and acknowledged before P. H. Eſq. one of the Maſters of the ſaid Court: whereby A. B. of in the pariſh of in the county of Gentleman, before our Lord the King in his Chancery appearing, owned himſelf indebted to Sir Richard Pepper Arden, Knight, Maſter of the Rolls, and I. E. Eſq. one of the Maſters of the ſaid Court, in the ſum of two thouſand pounds, to be paid to the ſaid Sir Richard Pepper Arden and I. E. or to either of them, their or either of their executors or adminiſtrators, on the day of

of next enſuing the date of the ſaid recognizance.

I do hereby certify, that the recognizance above mentioned was inrolled in the High Court of Chancery the day of 179 .

E. H.

W. H. of, &c. maketh oath, that he did ſee E. H. Eſq. deputy clerk to execute the office of inrolment in the High Court of Chancery for the county of Middleſex, ſign the above certificate.

W. H.

Sworn, &c. *(as in the inſtances of judgments).*

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